

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2009-063

State of Arkansas

As Engrossed: H3/3/09

87th General Assembly

A Bill

Regular Session, 2009

HOUSE BILL 1544

By: Representatives Harrelson, Williams

By: Senator Luker

Filed with: House Interim Committee on Insurance and Commerce
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO ENACT THE UNIFORM LIMITED COOPERATIVE
ASSOCIATION ACT (2007); AND FOR OTHER PURPOSES.

Subtitle

TO ENACT THE UNIFORM LIMITED COOPERATIVE
ASSOCIATION ACT (2007).

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 4 is amended to add an additional
chapter to read as follows:

CHAPTER 36 -- UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT (2007)

SUBCHAPTER 1 -- GENERAL PROVISIONS

4-36-101. Short title.

This chapter may be cited as the Uniform Limited Cooperative
Association Act (2007).

4-36-102. Definitions.

In this chapter:

(1) "Articles of organization" means the articles of
organization of a limited cooperative association required by § 4-36-302.
The term includes the articles as amended or restated.

(2) "Board of directors" means the board of directors of a



1 limited cooperative association.

2 (3) "Bylaws" means the bylaws of a limited cooperative
3 association. The term includes the bylaws as amended or restated.

4 (4) "Certificate of authority" means a certificate issued by the
5 Secretary of State for a foreign cooperative to transact business in this
6 state.

7 (5) "Contribution", except as used in § 4-36-1008(c), means a
8 benefit that a person provides to a limited cooperative association to become
9 or remain a member or in the person's capacity as a member.

10 (6) "Cooperative" means a limited cooperative association or an
11 entity organized under any cooperative law of any jurisdiction.

12 (7) "Designated office" means the office that a limited
13 cooperative association or a foreign cooperative is required to designate and
14 maintain under § 4-36-117(a)(1).

15 (8) "Director" means a director of a limited cooperative
16 association.

17 (9) "Distribution," except as used in § 4-36-1007(e), means a
18 transfer of money or other property from a limited cooperative association to
19 a member because of the member's financial rights or to a transferee of a
20 member's financial rights.

21 (10) "Entity" means a person other than an individual.

22 (11) "Financial rights" means the right to participate in
23 allocations and distributions as provided in § 4-36-1001 et seq. and § 4-36-
24 1201 et seq. but does not include rights or obligations under a marketing
25 contract governed by § 4-36-701 et seq.

26 (12) "Foreign cooperative" means an entity organized in a
27 jurisdiction other than this state under a law similar to this chapter.

28 (13) "Governance rights" means the right to participate in
29 governance of a limited cooperative association.

30 (14) "Investor member" means a member that has made a
31 contribution to a limited cooperative association and

32 (A) is not required by the organic rules to conduct
33 patronage with the association in the member's capacity as an investor member
34 in order to receive the member's interest; or

35 (B) is not permitted by the organic rules to conduct
36 patronage with the association in the member's capacity as an investor member

1 in order to receive the member's interest.

2 (15) "Limited cooperative association" means an association
3 organized under this chapter.

4 (16) "Member" means a person that is admitted as a patron member
5 or investor member, or both, in a limited cooperative association. The term
6 does not include a person that has dissociated as a member.

7 (17) "Member's interest" means the interest of a patron member
8 or investor member under § 4-36-601.

9 (18) "Members meeting" means an annual members meeting or
10 special meeting of members.

11 (19) "Organic law" means the statute providing for the creation
12 of an entity or principally governing its internal affairs.

13 (20) "Organic rules" means the articles of organization and
14 bylaws of a limited cooperative association.

15 (21) "Organizer" means an individual who signs the initial
16 articles of organization.

17 (22) "Patron member" means a member that has made a contribution
18 to a limited cooperative association and:

19 (A) is required by the organic rules to conduct patronage
20 with the association in the member's capacity as a patron member in order to
21 receive the member's interest; or

22 (B) is permitted by the organic rules to conduct patronage
23 with the association in the member's capacity as a patron member in order to
24 receive the member's interest.

25 (23) "Patronage" means business transactions between a limited
26 cooperative association and a person which entitle the person to receive
27 financial rights based on the value or quantity of business done between the
28 association and the person.

29 (24) "Person" means an individual, corporation, business trust,
30 cooperative, estate, trust, partnership, limited partnership, limited
31 liability company, limited cooperative association, joint venture,
32 association, public corporation, government or governmental subdivision,
33 agency, or instrumentality, or any other legal or commercial entity.

34 (25) "Principal office" means the principal executive office of
35 a limited cooperative association or foreign cooperative, whether or not in
36 this state.

1 (26) "Record", used as a noun, means information that is
2 inscribed on a tangible medium or that is stored in an electronic or other
3 medium and is retrievable in perceivable form.

4 (27) "Required information" means the information a limited
5 cooperative association is required to maintain under § 4-36-114.

6 (28) "Sign" means, with present intent to authenticate or adopt
7 a record:

8 (A) to execute or adopt a tangible symbol; or

9 (B) to attach to or logically associate with the record an
10 electronic symbol, sound, or process.

11 (29) "State" means a state of the United States, the District of
12 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
13 insular possession subject to the jurisdiction of the United States.

14 (30) "Transfer" includes an assignment, conveyance, deed, bill
15 of sale, lease, mortgage, security interest, encumbrance, gift, and transfer
16 by operation of law.

17 (31) "Voting group" means any combination of one or more voting
18 members in one or more districts or classes that under the organic rules or
19 this chapter are entitled to vote and can be counted together collectively on
20 a matter at a members meeting.

21 (32) "Voting member" means a member that, under the organic law
22 or organic rules, has a right to vote on matters subject to vote by members
23 under the organic law or organic rules.

24 (33) "Voting power" means the total current power of members to
25 vote on a particular matter for which a vote may or is to be taken.

26
27 4-36-103. Limited cooperative association subject to amendment or
28 repeal of chapter.

29 A limited cooperative association governed by this chapter is subject
30 to any amendment or repeal of this chapter.

31
32 4-36-104. Nature of limited cooperative association.

33 (a) A limited cooperative association organized under this chapter is
34 an autonomous, unincorporated association of persons united to meet their
35 mutual interests through a jointly owned enterprise primarily controlled by
36 those persons, which permits combining:

1 (1) ownership, financing, and receipt of benefits by the members
2 for whose interests the association is formed; and

3 (2) separate investments in the association by members who may
4 receive returns on their investments and a share of control.

5 (b) The fact that a limited cooperative association does not have one
6 or more of the characteristics described in subsection (a) does not alone
7 prevent the association from being formed under and governed by this chapter
8 nor does it alone provide a basis for an action against the association.

9
10 4-36-105. Purpose and duration of limited cooperative association.

11 (a) A limited cooperative association is an entity distinct from its
12 members.

13 (b) A limited cooperative association may be organized for any lawful
14 purpose, whether or not for profit.

15 (c) Unless the articles of organization state a term for a limited
16 cooperative association's existence, the association has perpetual duration.

17
18 4-36-106. Powers.

19 A limited cooperative association may sue and be sued in its own name
20 and do all things necessary or convenient to carry on its activities. An
21 association may maintain an action against a member for harm caused to the
22 association by the member's violation of a duty to the association or of the
23 organic law or organic rules.

24
25 4-36-107. Governing law.

26 The law of this state governs:

27 (1) the internal affairs of a limited cooperative association;
28 and

29 (2) the liability of a member as member and a director as
30 director for the debts, obligations, or other liabilities of a limited
31 cooperative association.

32
33 4-36-108. Supplemental principles of law.

34 Unless displaced by particular provisions of this chapter, the
35 principles of law and equity supplement this chapter.

36

1 4-36-109. Requirements of other laws.

2 (a) This chapter does not alter or amend any law that governs the
3 licensing and regulation of an individual or entity in carrying on a specific
4 business or profession even if that law permits the business or profession to
5 be conducted by a limited cooperative association, a foreign cooperative, or
6 its members.

7 (b) A limited cooperative association may not conduct an activity
8 that, under law of this state other than this chapter, may be conducted only
9 by an entity that meets specific requirements for the internal affairs of
10 that entity unless the organic rules of the association conform to those
11 requirements.

12
13 4-36-110. Relation to restraint of trade and antitrust laws.

14 To the extent a limited cooperative association or activities conducted
15 by the association in this state meet the material requirements for other
16 cooperatives entitled to an exemption from or immunity under any provision of
17 a restraint of trade or antitrust law of this state, the association and its
18 activities are entitled to the exemption or immunity. This section does not
19 create any new exemption or immunity for an association or affect any
20 exemption or immunity provided to a cooperative organized under any other
21 law.

22
23 4-36-111. Name.

24 (a) Use of the term "cooperative" or its abbreviation under this
25 chapter is not a violation of a provision restricting the use of the term to
26 a cooperative under another law of this state.

27 (b) The name of a limited cooperative association must contain the
28 words "limited cooperative association" or "limited cooperative" or the
29 abbreviation "L.C.A." or "LCA". "Limited" may be abbreviated as "Ltd."
30 "Cooperative" may be abbreviated as "Co-op" or "Coop". "Association" may be
31 abbreviated as "Assoc." or "Assn.". A limited cooperative association or a
32 member may enforce the restrictions on the use of the term "cooperative"
33 under this chapter and under a provision restricting the use of the term to a
34 cooperative under another law of this state.

35 (c) Except as otherwise provided in subsection (d), a limited
36 cooperative association may use only a name that is available. A name is

1 available if it is distinguishable in the records of the Secretary of State
2 from:

3 (1) the name of any entity organized or authorized to transact
4 business in this state;

5 (2) a name reserved under § 4-36-112; and

6 (3) an alternative name approved for a foreign cooperative
7 authorized to transact business in this state.

8 (d) A limited cooperative association may apply to the Secretary of
9 State for authorization to use a name that is not available. The Secretary
10 of State shall authorize use of the name if:

11 (1) the person with ownership rights to use the name consents in
12 a record to the use and applies in a form satisfactory to the Secretary of
13 State to change the name used or reserved to a name that is distinguishable
14 upon the records of the Secretary of State from the name applied for; or

15 (2) the applicant delivers to the Secretary of State a certified
16 copy of the final judgment of a court establishing the applicant's right to
17 use the name in this state.

18
19 4-36-112. Reservation of name.

20 (a) A person may reserve the exclusive use of the name of a limited
21 cooperative association, including a fictitious name for a foreign
22 cooperative whose name is not available under § 4-36-111, by delivering an
23 application to the Secretary of State for filing. The application must set
24 forth the name and address of the applicant and the name proposed to be
25 reserved. If the Secretary of State finds that the name applied for is
26 available under § 4-36-111, the Secretary of State shall reserve the name for
27 the applicant's exclusive use for a nonrenewable period of 120 days.

28 (b) A person that has reserved a name for a limited cooperative
29 association may transfer the reservation to another person by delivering to
30 the Secretary of State a signed notice of the transfer which states the name,
31 street address, and, if different, the mailing address of the transferee. If
32 the person is an organizer of the association and the name of the association
33 is the same as the reserved name, the delivery of articles of organization
34 for filing by the Secretary of State is a transfer by the person to the
35 association.

36

1 4-36-113. Effect of organic rules.

2 (a) The relations between a limited cooperative association and its
3 members are consensual. Unless required, limited, or prohibited by this
4 chapter, the organic rules may provide for any matter concerning the
5 relations among the members of the association and between the members and
6 the association, the activities of the association, and the conduct of its
7 activities.

8 (b) The matters referred to in paragraphs (1) through (12) may be
9 varied only in the articles of organization. The articles may:

10 (1) state a term of existence for the association under § 4-36-
11 105(c);

12 (2) limit or eliminate the acceptance of new or additional
13 members by the initial board of directors under § 4-36-303(b);

14 (3) vary the limitations on the obligations and liability of
15 members for association obligations under § 4-36-504;

16 (4) require a notice of an annual members meeting to state a
17 purpose of the meeting under § 4-36-508(b);

18 (5) vary the board of directors meeting quorum under § 4-36-
19 815(a);

20 (6) vary the matters the board of directors may consider in
21 making a decision under § 4-36-820;

22 (7) specify causes of dissolution under § 4-36-1202(1);

23 (8) delegate amendment of the bylaws to the board of directors
24 pursuant to § 4-36-405(f);

25 (9) provide for member approval of asset dispositions under § 4-
26 36-1501;

27 (10) subject to § 4-36-820, provide for the elimination or
28 limitation of liability of a director to the association or its members for
29 money damages pursuant to § 4-36-818;

30 (11) provide for permitting or making obligatory indemnification
31 under § 4-36-901(a); and

32 (12) provide for any matters that may be contained in the
33 organic rules, including those under subsection (c).

34 (c) The matters referred to in paragraphs (1) through (25) may be
35 varied only in the organic rules. The organic rules may:

36 (1) require more information to be maintained under § 4-36-114

1 or provided to members under § 4-36-505(k);

2 (2) provide restrictions on transactions between a member and an
3 association under § 4-36-115;

4 (3) provide for the percentage and manner of voting on
5 amendments to the organic rules by district, class, or voting group under §
6 4-36-404(a);

7 (4) provide for the percentage vote required to amend the bylaws
8 concerning the admission of new members under § 4-36-405(e)(5);

9 (5) provide for terms and conditions to become a member under §
10 4-36-502;

11 (6) restrict the manner of conducting members meetings under §§
12 4-36-506(c) and 4-36-507(e);

13 (7) designate the presiding officer of members meetings under §§
14 4-36-506(e) and 4-36-507(g);

15 (8) require a statement of purposes in the annual meeting notice
16 under § 4-36-508(b);

17 (9) increase quorum requirements for members meetings under § 4-
18 36-510 and board of directors meetings under § 4-36-815;

19 (10) allocate voting power among members, including patron
20 members and investor members, and provide for the manner of member voting and
21 action as permitted by §§ 4-36-511 – 4-36-517;

22 (11) authorize investor members and expand or restrict the
23 transferability of members' interests to the extent provided in §§ 4-36-602 –
24 4-36-604;

25 (12) provide for enforcement of a marketing contract under § 4-
26 36-704(a);

27 (13) provide for qualification, election, terms, removal,
28 filling vacancies, and member approval for compensation of directors in
29 accordance with §§ 4-36-803 – 4-36-805, 4-36-807, 4-36-809, and 4-36-810;

30 (14) restrict the manner of conducting board meetings and taking
31 action without a meeting under §§ 4-36-811 and 4-36-812;

32 (15) provide for frequency, location, notice and waivers of
33 notice for board meetings under §§ 4-36-813 and 4-36-814;

34 (16) increase the percentage of votes necessary for board action
35 under § 4-36-816(b);

36 (17) provide for the creation of committees of the board of

1 directors and matters related to the committees in accordance with § 4-36-
2 817;

3 (18) provide for officers and their appointment, designation,
4 and authority under § 4-36-822;

5 (19) provide for forms and values of contributions under § 4-36-
6 1002;

7 (20) provide for remedies for failure to make a contribution
8 under § 4-36-1003(b);

9 (21) provide for the allocation of profits and losses of the
10 association, distributions, and the redemption or repurchase of distributed
11 property other than money in accordance with §§ 4-36-1004 – 4-36-1007;

12 (22) specify when a member's dissociation is wrongful and the
13 liability incurred by the dissociating member for damage to the association
14 under § 4-36-1101(b) and (c);

15 (23) provide the personal representative, or other legal
16 representative of, a deceased member or a member adjudged incompetent with
17 additional rights under § 4-36-1103;

18 (24) increase the percentage of votes required for board of
19 director approval of:

20 (A) a resolution to dissolve under § 4-36-1205(a)(1);

21 (B) a proposed amendment to the organic rules under § 4-
22 36-402(a)(1);

23 (C) a plan of conversion under § 4-36-1603(a);

24 (D) a plan of merger under § 4-36-1607(a); and

25 (E) a proposed disposition of assets under § 4-36-1503(1);

26 and

27 (25) vary the percentage of votes required for members approval
28 of:

29 (A) a resolution to dissolve under § 4-36-1205;

30 (B) an amendment to the organic rules under § 4-36-405;

31 (C) a plan of conversion under § 4-36-1603;

32 (D) a plan of merger under § 4-36-1608; and

33 (E) a disposition of assets under § 4-36-1504.

34 (d) The organic rules must address members' contributions pursuant to
35 § 4-36-1001.

36

1 4-36-114. Required information.

2 (a) Subject to subsection (b), a limited cooperative association shall
3 maintain in a record available at its principal office:

4 (1) a list containing the name, last known street address and,
5 if different, mailing address, and term of office of each director and
6 officer;

7 (2) the initial articles of organization and all amendments to
8 and restatements of the articles, together with a signed copy of any power of
9 attorney under which any article, amendment, or restatement has been signed;

10 (3) the initial bylaws and all amendments to and restatements of
11 the bylaws;

12 (4) all filed articles of merger and statements of conversion;

13 (5) all financial statements of the association for the six most
14 recent years;

15 (6) the six most recent annual reports delivered by the
16 association to the Secretary of State;

17 (7) the minutes of members meetings for the six most recent
18 years;

19 (8) evidence of all actions taken by members without a meeting
20 for the six most recent years;

21 (9) a list containing:

22 (A) the name, in alphabetical order, and last known street
23 address and, if different, mailing address of each patron member and each
24 investor member; and

25 (B) if the association has districts or classes of
26 members, information from which each current member in a district or class
27 may be identified;

28 (10) the federal income tax returns, any state and local income
29 tax returns, and any tax reports of the association for the six most recent
30 years;

31 (11) accounting records maintained by the association in the
32 ordinary course of its operations for the six most recent years;

33 (12) the minutes of directors meetings for the six most recent
34 years;

35 (13) evidence of all actions taken by directors without a
36 meeting for the six most recent years;

1 (14) the amount of money contributed and agreed to be
2 contributed by each member;

3 (15) a description and statement of the agreed value of
4 contributions other than money made and agreed to be made by each member;

5 (16) the times at which, or events on the happening of which,
6 any additional contribution is to be made by each member;

7 (17) for each member, a description and statement of the
8 member's interest or information from which the description and statement can
9 be derived; and

10 (18) all communications concerning the association made in a
11 record to all members, or to all members in a district or class, for the six
12 most recent years.

13 (b) If a limited cooperative association has existed for less than the
14 period for which records must be maintained under subsection (a), the period
15 records must be kept is the period of the association's existence.

16 (c) The organic rules may require that more information be maintained.

17
18 4-36-115. Business transactions of member with limited cooperative
19 association.

20 Subject to §§ 4-36-818 and 4-36-819 and except as otherwise provided in
21 the organic rules or a specific contract relating to a transaction, a member
22 may lend money to and transact other business with a limited cooperative
23 association in the same manner as a person that is not a member.

24
25 4-36-116. Dual capacity.

26 A person may have a patron member's interest and an investor member's
27 interest. When such person acts as a patron member, the person is subject to
28 this chapter and the organic rules governing patron members. When such
29 person acts as an investor member, the person is subject to this chapter and
30 the organic rules governing investor members.

31
32 4-36-117. Designated office and agent for service of process.

33 (a) A limited cooperative association, or a foreign cooperative that
34 has a certificate of authority under § 4-36-1404, shall designate and
35 continuously maintain in this state:

36 (1) an office, as its designated office, which need not be a

1 place of the association's or foreign cooperative's activity in this state;
2 and

3 (2) an agent for service of process.

4 (b) The Model Registered Agents Act, § 4-20-101 et seq.:

5 (1) Governs the appointment, authority, powers, duties,
6 termination of appointment, and all other provisions concerning an agent for
7 service of process of a limited cooperative association or a foreign
8 cooperative; and

9 (2) May be used to obtain service of process upon a limited
10 cooperative association or a foreign cooperative.

11
12
13 4-36-118. Change of designated office.

14 (a) Except as otherwise provided in § 4-36-207(e), to change its
15 designated office or the street address or, if different, mailing address of
16 its principal office, a limited cooperative association must deliver to the
17 Secretary of State for filing a statement of change containing:

18 (1) the name of the limited cooperative association;

19 (2) the street address and, if different, mailing address of its
20 designated office; and

21 (3) if the designated office is to be changed, the street
22 address and, if different, mailing address of the new designated office.

23 (4) [Reserved.]

24 (5) [Reserved.]

25 (b) Except as otherwise provided in § 4-36-207(e), to change the
26 address of its designated office or the street address or, if different,
27 mailing address of its principal office, a foreign cooperative shall deliver
28 to the Secretary of State for filing a statement of change containing:

29 (1) the name of the foreign cooperative;

30 (2) the name, street address and, if different, mailing address
31 of its designated office;

32 (3) if the address of the designated office is to be changed,
33 the new information;

34 (4) the street address and, if different, mailing address of its
35 principal office; and

36 (5) if the street address or, if different, the mailing address

1 of its principal office is to be changed, the street address and, if
2 different, the mailing address of the new principal office.

3 (c) Except as otherwise provided in § 4-36-204, a statement of change
4 is effective when filed by the Secretary of State.

5
6 4-36-119. [Reserved.]

7
8 4-36-120. [Reserved.]

9
10
11 SUBCHAPTER 2 – FILING AND ANNUAL REPORTS

12 4-36-201. Signing of records delivered for filing to Secretary of
13 State.

14 (a) A record delivered to the Secretary of State for filing pursuant
15 to this chapter must be signed as follows:

16 (1) The initial articles of organization must be signed by at
17 least one organizer.

18 (2) A statement of cancellation under § 4-36-302(d) must be
19 signed by at least one organizer.

20 (3) Except as otherwise provided in paragraph (4), a record
21 signed on behalf of an existing limited cooperative association must be
22 signed by an officer.

23 (4) A record filed on behalf of a dissolved association must be
24 signed by a person winding up activities under § 4-36-1206 or a person
25 appointed under § 4-36-1206 to wind up those activities.

26 (5) Any other record must be signed by the person on whose
27 behalf the record is delivered to the Secretary of State.

28 (b) Any record to be signed under this chapter may be signed by an
29 authorized agent.

30
31 4-36-202. Signing and filing of records pursuant to judicial order.

32 (a) If a person required by this chapter to sign or deliver a record
33 to the Secretary of State for filing does not do so, the circuit court, upon
34 petition of an aggrieved person, may order:

35 (1) the person to sign the record and deliver it to the
36 Secretary of State for filing; or

1 (2) delivery of the unsigned record to the Secretary of State
2 for filing.

3 (b) An aggrieved person under subsection (a), other than the limited
4 cooperative association or foreign cooperative to which the record pertains,
5 shall make the association or foreign cooperative a party to the action
6 brought to obtain the order.

7 (c) An unsigned record filed pursuant to this section is effective.

8
9 4-36-203. Delivery to and filing of records by Secretary of State -
10 Effective time and date.

11 (a) A record authorized or required by this chapter to be delivered to
12 the Secretary of State for filing must be captioned to describe the record's
13 purpose, be in a medium and format permitted by the Secretary of State, and
14 be delivered to the Secretary of State. If the filing fees have been paid,
15 and unless the Secretary of State determines that the record does not comply
16 with the filing requirements of this chapter, the Secretary of State shall
17 file the record.

18 (b) The Secretary of State, upon request and payment of the required
19 fee, shall furnish a certified copy of any record filed by the Secretary of
20 State under this chapter to the person making the request.

21 (c) Except as otherwise provided in §§ 4-36-118 and 4-36-204, a record
22 delivered to the Secretary of State for filing under this chapter may specify
23 an effective time and a delayed effective date that may include an effective
24 time on that date. Except as otherwise provided in §§ 4-36-118 and 4-36-204,
25 a record filed by the Secretary of State under this chapter is effective:

26 (1) if the record does not specify an effective time and does
27 not specify a delayed effective date, on the date and at the time the record
28 is filed as evidenced by the Secretary of State's endorsement of the date and
29 time on the record;

30 (2) if the record specifies an effective time but not a delayed
31 effective date, on the date the record is filed at the time specified in the
32 record;

33 (3) if the record specifies a delayed effective date but not an
34 effective time, at 12:01 a.m. on the earlier of:

35 (A) the specified date; or

36 (B) the 90th day after the record is filed; or

1 (4) if the record specifies an effective time and a delayed
2 effective date, at the specified time on the earlier of:

3 (A) the specified date; or

4 (B) the 90th day after the record is filed.

5
6 4-36-204. Correcting filed record.

7 (a) A limited cooperative association or foreign cooperative may
8 deliver to the Secretary of State for filing a statement of correction to
9 correct a record previously delivered by the association or foreign
10 cooperative to the Secretary of State and filed by the Secretary of State if,
11 at the time of filing, the record contained inaccurate information or was
12 defectively signed.

13 (b) A statement of correction may not state a delayed effective date
14 and must:

15 (1) describe the record to be corrected, including its filing
16 date, or have attached a copy of the record as filed;

17 (2) specify the inaccurate information and the reason it is
18 inaccurate or the manner in which the signing was defective; and

19 (3) correct the inaccurate information or defective signature.

20 (c) When filed by the Secretary of State, a statement of correction is
21 effective:

22 (1) when filed as to persons relying on the inaccurate
23 information or defective signature before its correction and adversely
24 affected by the correction; and

25 (2) as to all other persons, retroactively as of the effective
26 date and time of the record the statement corrects.

27
28 4-36-205. Liability for inaccurate information in filed record.

29 If a record delivered to the Secretary of State for filing under this
30 chapter and filed by the Secretary of State contains inaccurate information,
31 a person that suffers a loss by reliance on the information may recover
32 damages for the loss from a person that signed the record or caused another
33 to sign it on the person's behalf and knew at the time the record was signed
34 that the information was inaccurate.

35
36 4-36-206. Certificate of good standing or authorization.

1 (a) The Secretary of State, upon request and payment of the required
2 fee, shall furnish any person that requests it a certificate of good standing
3 for a limited cooperative association if the records filed in the office of
4 the Secretary of State show that the Secretary of State has filed the
5 association's articles of organization, that the association is in good
6 standing, and that the Secretary of State has not filed a statement of
7 termination.

8 (b) The Secretary of State, upon request and payment of the required
9 fee, shall furnish to any person that requests it a certificate of authority
10 for a foreign cooperative if the records filed in the office of the Secretary
11 of State show that the Secretary of State has filed the foreign cooperative's
12 certificate of authority, has not revoked nor has reason to revoke the
13 certificate of authority, and has not filed a notice of cancellation.

14 (c) Subject to any exceptions stated in the certificate, a certificate
15 of good standing or authority issued by the Secretary of State establishes
16 conclusively that the limited cooperative association or foreign cooperative
17 is in good standing or is authorized to transact business in this state.

18
19 4-36-207. Annual report for Secretary of State.

20 (a) A limited cooperative association or foreign cooperative
21 authorized to transact business in this state shall deliver to the Secretary
22 of State for filing an annual report that states:

23 (1) the name of the association or foreign cooperative;

24 (2) the street address and, if different, mailing address of the
25 association's or foreign cooperative's designated office and the information
26 concerning its agent for service of process required by § 4-20-105(a);

27 (3) the street address and, if different, mailing address of the
28 association's or foreign cooperative's principal office; and

29 (4) in the case of a foreign cooperative, the state or other
30 jurisdiction under whose law the foreign cooperative is formed and any
31 alternative name adopted under § 4-36-1405.

32 (b) Information in an annual report must be current as of the date the
33 report is delivered to the Secretary of State.

34 (c) The first annual report must be delivered to the Secretary of
35 State between January 1 and May 1 of the year following the calendar year in
36 which the limited cooperative association is formed or the foreign

1 cooperative is authorized to transact business in this state. An annual
2 report must be delivered to the Secretary of State between January 1 and
3 May 1 of each subsequent calendar year.

4 (d) If an annual report does not contain the information required by
5 subsection (a), the Secretary of State shall promptly notify the reporting
6 limited cooperative association or foreign cooperative and return the report
7 for correction. If the report is corrected to contain the information
8 required by subsection (a) and delivered to the Secretary of State not later
9 than 30 days after the date of the notice from the Secretary of State, it is
10 timely delivered.

11 (e) If a filed annual report contains an address of the designated
12 office, name of the agent for service of process, or address of the principal
13 office which differs from the information shown in the records of the
14 Secretary of State immediately before the filing, the differing information
15 in the annual report is considered a statement of change.

16 (f) If a limited cooperative association fails to deliver an annual
17 report under this section, the Secretary of State may proceed under § 4-36-
18 1211 to dissolve the association administratively.

19 (g) If a foreign cooperative fails to deliver an annual report under
20 this section, the Secretary of State may revoke the certificate of authority
21 of the cooperative.

22
23 4-36-208. Filing fees.

24 (a) The Secretary of State shall collect the following fees when the
25 documents described in this subsection are delivered to him or her for
26 filing:

<u>DOCUMENT</u>	<u>FEE</u>
27 <u>(1) Articles of organization.....</u>	<u>\$ 50.00</u>
28 <u>(2) Application for use of indistinguishable name.....</u>	<u>No fee</u>
29 <u>(3) Application for reserved name.....</u>	<u>\$ 25.00</u>
30 <u>(4) Notice of transfer of reserved name.....</u>	<u>\$ 25.00</u>
31 <u>(5) Statement of change of registered agent or registered agent</u>	
32 <u>address.....</u>	<u>No fee</u>
33 <u>(6) Statement of resignation of registered agent.....</u>	<u>No fee</u>
34 <u>(7) Amendment of articles of organization.....</u>	<u>\$ 50.00</u>
35 <u>(8) Restatement of articles of organization with amendment of articles</u>	
36	

1	<u>.....</u>	<u>\$ 100.00</u>
2	<u>(9) Articles of merger or conversion.....</u>	<u>\$ 100.00</u>
3	<u>(10) Articles of dissolution or termination.....</u>	<u>\$ 50.00</u>
4	<u>(11) Articles of revocation of dissolution.....</u>	<u>\$ 150.00</u>
5	<u>(12) Certificate of administrative dissolution.....</u>	<u>No fee</u>
6	<u>(13) Application for reinstatement following administrative</u>	
7	<u>dissolution.....</u>	<u>\$ 50.00</u>
8	<u>(14) Certificate of reinstatement.....</u>	<u>No fee</u>
9	<u>(15) Certificate of judicial dissolution.....</u>	<u>No fee</u>
10	<u>(16) Application for certificate of authority.....</u>	<u>\$ 300.00</u>
11	<u>(17) Application for amended certificate of authority.....</u>	<u>\$ 300.00</u>
12	<u>(18) Application for certificate of withdrawal.....</u>	<u>\$ 300.00</u>
13	<u>(19) Certificate of revocation of authority to transact business</u>	
14	<u>.....</u>	<u>No fee</u>
15	<u>(20) Articles of correction.....</u>	<u>\$ 30.00</u>
16	<u>(21) Application for certificate of good standing or</u>	
17	<u>authorization.....</u>	<u>\$ 15.00</u>
18	<u>(22) Any other document required or permitted to be filed by this</u>	
19	<u>chapter.....</u>	<u>\$ 25.00</u>
20	<u>(b)(1) The Secretary of State shall collect a fee of twenty-five</u>	
21	<u>dollars (\$25.00) each time process is served on him or her under this</u>	
22	<u>chapter.</u>	
23	<u>(2) The party to a proceeding causing service of process is</u>	
24	<u>entitled to recover the process fee as costs if the party prevails in the</u>	
25	<u>proceeding.</u>	
26	<u>(c) The Secretary of State shall collect the following fees for</u>	
27	<u>copying and certifying the copy of any filed document relating to a domestic</u>	
28	<u>or foreign limited cooperative association:</u>	
29	<u>(1) Fifty cents (50¢) per page for copying; and</u>	
30	<u>(2) Five dollars (\$5.00) for the certificate.</u>	
31	<u>(d) Except as provided in subsection (e) of this section, the</u>	
32	<u>Secretary of State shall collect the following fees when the documents</u>	
33	<u>described in this subsection are delivered by electronic means:</u>	
34	<u>DOCUMENT</u>	<u>FEE PROCESSING FEE</u>
35	<u>(1) Articles of organization.....</u>	<u>\$ 40.00 \$ 5.00</u>
36	<u>(2) Application for reservation of name.....</u>	<u>\$ 18.50 \$ 4.00</u>

- 1 (3) Certificate of amendment..... \$ 40.00 \$ 5.00
- 2 (4) Notice of transfer of reserved name..... \$ 18.50 \$ 4.00
- 3 (5) Notice of change of registered office or agent or both... No fee
- 4 (6) Application for certificate of authority.. \$ 258.00\$ 12.00

5 (e) For any document not listed in subsection (d) of this section, the
 6 cost for electronic filing is:

7 (1) Four dollars (\$4.00) for the processing fee when the filing
 8 fee is fifty dollars (\$50.00) or less than fifty dollars (\$50);

9 (2) Five dollars (\$5.00) for the processing fee when the filing
 10 fee exceeds fifty dollars (\$50.00) but is less than one hundred dollars
 11 (\$100);

12 (3) Ten dollars (\$10.00) for the processing fee when the filing
 13 fee exceeds or is equal to one hundred dollars (\$100) but is less than three
 14 hundred dollars (\$300); and

15 (4) Twelve dollars (\$12.00) for the processing fee when the
 16 filing fee is three hundred dollars (\$300) or more.

17

18 SUBCHAPTER 3 – FORMATION AND INITIAL ARTICLES OF ORGANIZATION OF LIMITED
 19 COOPERATIVE ASSOCIATION

20 4-36-301. Organizers.

21 A limited cooperative association must be organized by one or more
 22 organizers.

23

24 4-36-302. Formation of limited cooperative association – Articles of
 25 organization.

26 (a) To form a limited cooperative association, an organizer of the
 27 association must deliver articles of organization to the Secretary of State
 28 for filing. The articles must state:

29 (1) the name of the association;

30 (2) the purposes for which the association is formed;

31 (3) the street address and, if different, mailing address of the
 32 association's initial designated office and the information concerning the
 33 association's initial agent for service of process required by § 4-20-105(a);

34 (4) the street address and, if different, mailing address of the
 35 initial principal office;

36 (5) the name and street address and, if different, mailing

1 address of each organizer; and

2 (6) the term for which the association is to exist if other than
3 perpetual.

4 (b) Subject to § 4-36-113(a), articles of organization may contain any
5 other provisions in addition to those required by subsection (a).

6 (c) A limited cooperative association is formed after articles of
7 organization that substantially comply with subsection (a) are delivered to
8 the Secretary of State, are filed, and become effective under § 4-36-203(c).

9 (d) If articles of organization filed by the Secretary of State state
10 a delayed effective date, a limited cooperative association is not formed if,
11 before the articles take effect, an organizer signs and delivers to the
12 Secretary of State for filing a statement of cancellation.

13
14 4-36-303. Organization of limited cooperative association.

15 (a) After a limited cooperative association is formed:

16 (1) if initial directors are named in the articles of
17 organization, the initial directors shall hold an organizational meeting to
18 adopt initial bylaws and carry on any other business necessary or proper to
19 complete the organization of the association; or

20 (2) if initial directors are not named in the articles of
21 organization, the organizers shall designate the initial directors and call a
22 meeting of the initial directors to adopt initial bylaws and carry on any
23 other business necessary or proper to complete the organization of the
24 association.

25 (b) Unless the articles of organization otherwise provide, the initial
26 directors may cause the limited cooperative association to accept members,
27 including those necessary for the association to begin business.

28 (c) Initial directors need not be members.

29 (d) An initial director serves until a successor is elected and
30 qualified at a members meeting or the director is removed, resigns, is
31 adjudged incompetent, or dies.

32
33 4-36-304. Bylaws.

34 (a) Bylaws must be in a record and, if not stated in the articles of
35 organization, must include:

36 (1) a statement of the capital structure of the limited

1 cooperative association, including:

2 (A) the classes or other types of members' interests and
3 relative rights, preferences, and restrictions granted to or imposed upon
4 each class or other type of member's interest; and

5 (B) the rights to share in profits or distributions of the
6 association;

7 (2) a statement of the method for admission of members;

8 (3) a statement designating voting and other governance rights,
9 including which members have voting power and any restriction on voting
10 power;

11 (4) a statement that a member's interest is transferable if it
12 is to be transferable and a statement of the conditions upon which it may be
13 transferred;

14 (5) a statement concerning the manner in which profits and
15 losses are allocated and distributions are made among patron members and, if
16 investor members are authorized, the manner in which profits and losses are
17 allocated and how distributions are made among investor members and between
18 patron members and investor members;

19 (6) a statement concerning:

20 (A) whether persons that are not members but conduct
21 business with the association may be permitted to share in allocations of
22 profits and losses and receive distributions; and

23 (B) the manner in which profits and losses are allocated
24 and distributions are made with respect to those persons; and

25 (7) a statement of the number and terms of directors or the
26 method by which the number and terms are determined.

27 (b) Subject to § 4-36-113(c) and the articles of organization, bylaws
28 may contain any other provision for managing and regulating the affairs of
29 the association.

30 (c) In addition to amendments permitted under § 4-36-401 et seq., the
31 initial board of directors may amend the bylaws by a majority vote of the
32 directors at any time before the admission of members.

33
34 SUBCHAPTER 4 – AMENDMENT OF ORGANIC RULES OF LIMITED COOPERATIVE ASSOCIATION

35 4-36-401. Authority to amend organic rules.

36 (a) A limited cooperative association may amend its organic rules

1 under this subchapter for any lawful purpose. In addition, the initial board
2 of directors may amend the bylaws of an association under § 4-36-304.

3 (b) Unless the organic rules otherwise provide, a member does not have
4 a vested property right resulting from any provision in the organic rules,
5 including a provision relating to the management, control, capital structure,
6 distribution, entitlement, purpose, or duration of the limited cooperative
7 association.

8
9 4-36-402. Notice and action on amendment of organic rules.

10 (a) Except as provided in §§ 4-36-401(a) and 4-36-405(f), the organic
11 rules of a limited cooperative association may be amended only at a members
12 meeting. An amendment may be proposed by either:

13 (1) a majority of the board of directors, or a greater
14 percentage if required by the organic rules; or

15 (2) one or more petitions signed by at least 10 percent of the
16 patron members or at least 10 percent of the investor members.

17 (b) The board of directors shall call a members meeting to consider an
18 amendment proposed pursuant to subsection (a). The meeting must be held not
19 later than 90 days following the proposal of the amendment by the board or
20 receipt of a petition. The board must mail or otherwise transmit or deliver
21 in a record to each member:

22 (1) the proposed amendment, or a summary of the proposed
23 amendment and a statement of the manner in which a copy of the amendment in a
24 record may be reasonably obtained by a member;

25 (2) a recommendation that the members approve the amendment, or
26 if the board determines that because of conflict of interest or other special
27 circumstances it should not make a favorable recommendation, the basis for
28 that determination;

29 (3) a statement of any condition of the board's submission of
30 the amendment to the members; and

31 (4) notice of the meeting at which the proposed amendment will
32 be considered, which must be given in the same manner as notice for a special
33 meeting of members.

34
35 4-36-403. Method of voting on amendment of organic rules.

36 (a) A substantive change to a proposed amendment of the organic rules

1 may not be made at the members meeting at which a vote on the amendment
2 occurs.

3 (b) A nonsubstantive change to a proposed amendment of the organic
4 rules may be made at the members meeting at which the vote on the amendment
5 occurs and need not be separately voted upon by the board of directors.

6 (c) A vote to adopt a nonsubstantive change to a proposed amendment to
7 the organic rules must be by the same percentage of votes required to pass a
8 proposed amendment.

9
10 4-36-404. Voting by district, class, or voting group.

11 (a) This section applies if the organic rules provide for voting by
12 district or class, or if there is one or more identifiable voting groups that
13 a proposed amendment to the organic rules would affect differently from other
14 members with respect to matters identified in § 4-36-405(e)(1)-(5). Approval
15 of the amendment requires the same percentage of votes of the members of that
16 district, class, or voting group required in §§ 4-36-405 and 4-36-514.

17 (b) If a proposed amendment to the organic rules would affect members
18 in two or more districts or classes entitled to vote separately under
19 subsection (a) in the same or a substantially similar way, the districts or
20 classes affected must vote as a single voting group unless the organic rules
21 otherwise provide for separate voting.

22
23 4-36-405. Approval of amendment.

24 (a) Subject to § 4-36-404 and subsections (c) and (d), an amendment to
25 the articles of organization must be approved by:

26 (1) at least two-thirds of the voting power of members present
27 at a members meeting called under § 4-36-402; and

28 (2) if the limited cooperative association has investor members,
29 at least a majority of the votes cast by patron members, unless the organic
30 rules require a greater percentage vote by patron members.

31 (b) Subject to § 4-36-404 and subsections (c), (d), (e) and (f), an
32 amendment to the bylaws must be approved by:

33 (1) at least a majority vote of the voting power of all members
34 present at a members meeting called under § 4-36-402, unless the organic
35 rules require a greater percentage; and

36 (2) if a limited cooperative association has investor members, a

1 majority of the votes cast by patron members, unless the organic rules
2 require a larger affirmative vote by patron members.

3 (c) The organic rules may require that the percentage of votes under
4 subsection (a)(1) or (b)(1) be:

5 (1) a different percentage that is not less than a majority of
6 members voting at the meeting;

7 (2) measured against the voting power of all members; or

8 (3) a combination of paragraphs (1) and (2).

9 (d) Consent in a record by a member must be delivered to a limited
10 cooperative association before delivery of an amendment to the articles of
11 organization or restated articles of organization for filing pursuant to § 4-
12 36-407, if as a result of the amendment the member will have:

13 (1) personal liability for an obligation of the association; or

14 (2) an obligation or liability for an additional contribution.

15 (e) The vote required to amend bylaws must satisfy the requirements of
16 subsection (a) if the proposed amendment modifies:

17 (1) the equity capital structure of the limited cooperative
18 association, including the rights of the association's members to share in
19 profits or distributions, or the relative rights, preferences, and
20 restrictions granted to or imposed upon one or more districts, classes, or
21 voting groups of similarly situated members;

22 (2) the transferability of a member's interest;

23 (3) the manner or method of allocation of profits or losses
24 among members;

25 (4) the quorum for a meeting and the rights of voting and
26 governance; or

27 (5) unless otherwise provided in the organic rules, the terms
28 for admission of new members.

29 (f) Except for the matters described in subsection (e), the articles
30 of organization may delegate amendment of all or a part of the bylaws to the
31 board of directors without requiring member approval.

32 (g) If the articles of organization delegate amendment of bylaws to
33 the board of directors, the board shall provide a description of any
34 amendment of the bylaws made by the board to the members in a record not
35 later than 30 days after the amendment, but the description may be provided
36 at the next annual members meeting if the meeting is held within the 30-day

1 period.

2
3 4-36-406. Restated articles of organization.

4 A limited cooperative association, by the affirmative vote of a
5 majority of the board of directors taken at a meeting for which the purpose
6 is stated in the notice of the meeting, may adopt restated articles of
7 organization that contain the original articles as previously amended.
8 Restated articles may contain amendments if the restated articles are adopted
9 in the same manner and with the same vote as required for amendments to the
10 articles under § 4-36-405(a). Upon filing, restated articles supersede the
11 existing articles and all amendments.

12
13 4-36-407. Amendment or restatement of articles of organization -
14 Filing.

15 (a) To amend its articles of organization, a limited cooperative
16 association must deliver to the Secretary of State for filing an amendment of
17 the articles, or restated articles of organization or articles of conversion
18 or merger pursuant to § 4-36-1601 et seq., which contain one or more
19 amendments of the articles of organization, stating:

20 (1) the name of the association;

21 (2) the date of filing of the association's initial articles;

22 and

23 (3) the changes the amendment makes to the articles as most
24 recently amended or restated.

25 (b) Before the beginning of the initial meeting of the board of
26 directors, an organizer who knows that information in the filed articles of
27 organization was inaccurate when the articles were filed or has become
28 inaccurate due to changed circumstances shall promptly:

29 (1) cause the articles to be amended; or

30 (2) if appropriate, deliver an amendment to the Secretary of
31 State for filing pursuant to § 4-36-203.

32 (c) If restated articles of organization are adopted, the restated
33 articles may be delivered to the Secretary of State for filing in the same
34 manner as an amendment.

35 (d) Upon filing, an amendment of the articles of organization or other
36 record containing an amendment of the articles which has been properly

1 adopted by the members is effective as provided in § 4-36-203(c).

2
3 SUBCHAPTER 5 – MEMBERS

4 4-36-501. Members.

5 To begin business, a limited cooperative association must have at least
6 two patron members unless the sole member is a cooperative.

7
8 4-36-502. Becoming a member.

9 A person becomes a member:

10 (1) as provided in the organic rules;

11 (2) as the result of a merger or conversion under § 4-36-1601 et
12 seq.; or

13 (3) with the consent of all the members.

14
15 4-36-503. No power as member to bind association.

16 A member, solely by reason of being a member, may not act for or bind
17 the limited cooperative association.

18
19 4-36-504. No liability as member for association's obligations.

20 Unless the articles of organization otherwise provide, a debt,
21 obligation, or other liability of a limited cooperative association is solely
22 that of the association and is not the debt, obligation, or liability of a
23 member solely by reason of being a member.

24
25 4-36-505. Right of member and former member to information.

26 (a) Not later than 10 business days after receipt of a demand made in
27 a record, a limited cooperative association shall permit a member to obtain,
28 inspect, and copy in the association's principal office required information
29 listed in § 4-36-114(a)(1)-(8) during regular business hours. A member need
30 not have any particular purpose for seeking the information. The association
31 is not required to provide the same information listed in § 4-36-114(a)(2)-
32 (8) to the same member more than once during a six-month period.

33 (b) On demand made in a record received by the limited cooperative
34 association, a member may obtain, inspect, and copy in the association's
35 principal office required information listed in § 4-36-114(a)(9), (10), (12),
36 (13), (16) and (18) during regular business hours, if:

1 (1) the member seeks the information in good faith and for a
2 proper purpose reasonably related to the member's interest;

3 (2) the demand includes a description with reasonable
4 particularity of the information sought and the purpose for seeking the
5 information;

6 (3) the information sought is directly connected to the member's
7 purpose; and

8 (4) the demand is reasonable.

9 (c) Not later than 10 business days after receipt of a demand pursuant
10 to subsection (b), a limited cooperative association shall provide, in a
11 record, the following information to the member that made the demand:

12 (1) if the association agrees to provide the demanded
13 information:

14 (A) what information the association will provide in
15 response to the demand; and

16 (B) a reasonable time and place at which the association
17 will provide the information; or

18 (2) if the association declines to provide some or all of the
19 demanded information, the association's reasons for declining.

20 (d) A person dissociated as a member may obtain, inspect, and copy
21 information available to a member under subsection (a) or (b) by delivering a
22 demand in a record to the limited cooperative association in the same manner
23 and subject to the same conditions applicable to a member under subsection
24 (b) if:

25 (1) the information pertains to the period during which the
26 person was a member in the association; and

27 (2) the person seeks the information in good faith.

28 (e) A limited cooperative association shall respond to a demand made
29 pursuant to subsection (d) in the manner provided in subsection (c).

30 (f) Not later than 10 business days after receipt by a limited
31 cooperative association of a demand made by a member in a record, but not
32 more often than once in a six-month period, the association shall deliver to
33 the member a record stating the information with respect to the member
34 required by § 4-36-114(a)(17).

35 (g) A limited cooperative association may impose reasonable
36 restrictions, including nondisclosure restrictions, on the use of information

1 obtained under this section. In a dispute concerning the reasonableness of a
2 restriction under this subsection, the association has the burden of proving
3 reasonableness.

4 (h) A limited cooperative association may charge a person that makes a
5 demand under this section reasonable costs of copying, limited to the costs
6 of labor and material.

7 (i) A person that may obtain information under this section may obtain
8 the information through an attorney or other agent. A restriction imposed on
9 the person under subsection (g) or by the organic rules applies to the
10 attorney or other agent.

11 (j) The rights stated in this section do not extend to a person as
12 transferee.

13 (k) The organic rules may require a limited cooperative association to
14 provide more information than required by this section and may establish
15 conditions and procedures for providing the information.

16
17 4-36-506. Annual meeting of members.

18 (a) Members shall meet annually at a time provided in the organic
19 rules or set by the board of directors not inconsistent with the organic
20 rules.

21 (b) An annual members meeting may be held inside or outside this state
22 at the place stated in the organic rules or selected by the board of
23 directors not inconsistent with the organic rules.

24 (c) Unless the organic rules otherwise provide, members may attend or
25 conduct an annual members meeting through any means of communication if all
26 members attending the meeting can communicate with each other during the
27 meeting.

28 (d) The board of directors shall report, or cause to be reported, at
29 the association's annual members meeting the association's business and
30 financial condition as of the close of the most recent fiscal year.

31 (e) Unless the organic rules otherwise provide, the board of directors
32 shall designate the presiding officer of the association's annual members
33 meeting.

34 (f) Failure to hold an annual members meeting does not affect the
35 validity of any action by the limited cooperative association.

36

1 4-36-507. Special meeting of members.

2 (a) A special meeting of members may be called only:

3 (1) as provided in the organic rules;

4 (2) by a majority vote of the board of directors on a proposal
5 stating the purpose of the meeting;

6 (3) by demand in a record signed by members holding at least 20
7 percent of the voting power of the persons in any district or class entitled
8 to vote on the matter that is the purpose of the meeting stated in the
9 demand; or

10 (4) by demand in a record signed by members holding at least 10
11 percent of the total voting power of all the persons entitled to vote on the
12 matter that is the purpose of the meeting stated in the demand.

13 (b) A demand under subsection (a)(3) or (4) must be submitted to the
14 officer of the limited cooperative association charged with keeping its
15 records.

16 (c) Any voting member may withdraw its demand under subsection (a)(3)
17 or (4) before receipt by the limited cooperative association of demands
18 sufficient to require a special meeting of members.

19 (d) A special meeting of members may be held inside or outside this
20 state at the place stated in the organic rules or selected by the board of
21 directors not inconsistent with the organic rules.

22 (e) Unless the organic rules otherwise provide, members may attend or
23 conduct a special meeting of members through the use of any means of
24 communication if all members attending the meeting can communicate with each
25 other during the meeting.

26 (f) Only business within the purpose or purposes stated in the notice
27 of a special meeting of members may be conducted at the meeting.

28 (g) Unless the organic rules otherwise provide, the presiding officer
29 of a special meeting of members shall be designated by the board of
30 directors.

31
32 4-36-508. Notice of members meeting.

33 (a) A limited cooperative association shall notify each member of the
34 time, date, and place of a members meeting at least 15 and not more than 60
35 days before the meeting.

36 (b) Unless the articles of organization otherwise provide, notice of

1 an annual members meeting need not include any purpose of the meeting.

2 (c) Notice of a special meeting of members must include each purpose
3 of the meeting as contained in the demand under § 4-36-507(a)(3) or (4) or as
4 voted upon by the board of directors under § 4-36-507(a)(2).

5 (d) Notice of a members meeting must be given in a record unless oral
6 notice is reasonable under the circumstances.

7
8 4-36-509. Waiver of members meeting notice.

9 (a) A member may waive notice of a members meeting before, during, or
10 after the meeting.

11 (b) A member's participation in a members meeting is a waiver of
12 notice of that meeting unless the member objects to the meeting at the
13 beginning of the meeting or promptly upon the member's arrival at the meeting
14 and does not thereafter vote for or assent to action taken at the meeting.

15
16 4-36-510. Quorum of members.

17 Unless the organic rules otherwise require a greater number of members
18 or percentage of the voting power, the voting member or members present at a
19 members meeting constitute a quorum.

20
21 4-36-511. Voting by patron members.

22 Except as provided by § 4-36-512(a), each patron member has one vote.
23 The organic rules may allocate voting power among patron members as provided
24 in § 4-36-512(a).

25
26 4-36-512. Determination of voting power of patron member.

27 (a) The organic rules may allocate voting power among patron members
28 on the basis of one or a combination of the following:

29 (1) one member, one vote;

30 (2) use or patronage;

31 (3) equity; or

32 (4) if a patron member is a cooperative, the number of its
33 patron members.

34 (b) The organic rules may provide for the allocation of patron member
35 voting power by districts or class, or any combination thereof.

36

1 4-36-513. Voting by investor members.

2 If the organic rules provide for investor members, each investor member
3 has one vote, unless the organic rules otherwise provide. The organic rules
4 may provide for the allocation of investor member voting power by class,
5 classes, or any combination of classes.

6
7 4-36-514. Voting requirements for members.

8 If a limited cooperative association has both patron and investor
9 members, the following rules apply:

10 (1) the total voting power of all patron members may not be less
11 than a majority of the entire voting power entitled to vote.

12 (2) action on any matter is approved only upon the affirmative
13 vote of at least a majority of:

14 (A) all members voting at the meeting unless more than a
15 majority is required by § 4-36-401 et seq., § 4-36-1201 et seq., § 4-36-1501
16 et seq., and § 4-36-1601 et seq. or the organic rules; and

17 (B) votes cast by patron members unless the organic rules
18 require a larger affirmative vote by patron members.

19 (3) The organic rules may provide for the percentage of the
20 affirmative votes that must be cast by investor members to approve the
21 matter.

22
23 4-36-515. Manner of voting.

24 (a) Unless the organic rules otherwise provide, voting by a proxy at a
25 members meeting is prohibited. This subsection does not prohibit delegate
26 voting based on district or class.

27 (b) If voting by a proxy is permitted, a patron member may appoint
28 only another patron member as a proxy and, if investor members are permitted,
29 an investor member may appoint only another investor member as a proxy.

30 (c) The organic rules may provide for the manner of and provisions
31 governing the appointment of a proxy.

32 (d) The organic rules may provide for voting on any question by ballot
33 delivered by mail or voting by other means on questions that are subject to
34 vote by members.

35
36 4-36-516. Action without a meeting.

1 (a) Unless the organic rules require that action be taken only at a
2 members meeting, any action that may be taken by the members may be taken
3 without a meeting if each member entitled to vote on the action consents in a
4 record to the action.

5 (b) Consent under subsection (a) may be withdrawn by a member in a
6 record at any time before the limited cooperative association receives a
7 consent from each member entitled to vote.

8 (c) Consent to any action may specify the effective date or time of
9 the action.

10
11 4-36-517. Districts and delegates – Classes of members.

12 (a) The organic rules may provide for the formation of geographic
13 districts of patron members and:

14 (1) for the conduct of patron member meetings by districts and
15 the election of directors at the meetings; or

16 (2) that districts may elect district delegates to represent and
17 vote for the district at members meetings.

18 (b) A delegate elected under subsection (a)(2) has one vote unless
19 voting power is otherwise allocated by the organic rules.

20 (c) The organic rules may provide for the establishment of classes of
21 members, for the preferences, rights, and limitations of the classes, and:

22 (1) for the conduct of members meetings by classes and the
23 election of directors at the meetings; or

24 (2) that classes may elect class delegates to represent and vote
25 for the class in members meetings.

26 (d) A delegate elected under subsection (c)(2) has one vote unless
27 voting power is otherwise allocated by the organic rules.

28
29
30 SUBCHAPTER 6 – MEMBER’S INTEREST IN LIMITED COOPERATIVE ASSOCIATION

31 4-36-601. Member’s interest.

32 A member’s interest:

33 (1) is personal property;

34 (2) consists of:

35 (A) governance rights;

36 (B) financial rights; and

1 (C) the right or obligation, if any, to do business with
2 the limited cooperative association; and

3 (3) may be in certificated or uncertificated form.

4
5 4-36-602. Patron and investor members' interests.

6 (a) Unless the organic rules establish investor members' interests, a
7 member's interest is a patron member's interest.

8 (b) Unless the organic rules otherwise provide, if a limited
9 cooperative association has investor members, while a person is a member of
10 the association, the person:

11 (1) if admitted as a patron member, remains a patron member;

12 (2) if admitted as an investor member, remains an investor
13 member; and

14 (3) if admitted as a patron member and investor member remains a
15 patron and investor member if not dissociated in one of the capacities.

16
17 4-36-603. Transferability of member's interest.

18 (a) The provisions of this chapter relating to the transferability of
19 a member's interest are subject to the Uniform Commercial Code, § 4-1-101 et
20 seq.

21 (b) Unless the organic rules otherwise provide, a member's interest
22 other than financial rights is not transferable.

23 (c) Unless a transfer is restricted or prohibited by the organic
24 rules, a member may transfer its financial rights in the limited cooperative
25 association.

26 (d) The terms of any restriction on transferability of financial
27 rights must be:

28 (1) set forth in the organic rules and the member records of the
29 association; and

30 (2) conspicuously noted on any certificates evidencing a
31 member's interest.

32 (e) A transferee of a member's financial rights, to the extent the
33 rights are transferred, has the right to share in the allocation of profits
34 or losses and to receive the distributions to the member transferring the
35 interest to the same extent as the transferring member.

36 (f) A transferee of a member's financial rights does not become a

1 member upon transfer of the rights unless the transferee is admitted as a
2 member by the limited cooperative association.

3 (g) A limited cooperative association need not give effect to a
4 transfer under this section until the association has notice of the transfer.

5 (h) A transfer of a member's financial rights in violation of a
6 restriction on transfer contained in the organic rules is ineffective as to a
7 person having notice of the restriction at the time of transfer.

8
9 4-36-604. Security interest and set-off.

10 (a) A member or transferee may create an enforceable security interest
11 in its financial rights in a limited cooperative association.

12 (b) Unless the organic rules otherwise provide, a member may not
13 create an enforceable security interest in the member's governance rights in
14 a limited cooperative association.

15 (c) The organic rules may provide that a limited cooperative
16 association has a security interest in the financial rights of a member to
17 secure payment of any indebtedness or other obligation of the member to the
18 association. A security interest provided for in the organic rules is
19 enforceable under, and governed by, Article 9 of the Uniform Commercial Code,
20 § 4-9-101 et seq.

21 (d) Unless the organic rules otherwise provide, a member may not
22 compel the limited cooperative association to offset financial rights against
23 any indebtedness or obligation owed to the association.

24
25 4-36-605. Charging orders for judgment creditor of member or
26 transferee.

27 (a) On application by a judgment creditor of a member or transferee, a
28 court may enter a charging order against the financial rights of the judgment
29 debtor for the unsatisfied amount of the judgment. A charging order issued
30 under this subsection constitutes a lien on the judgment debtor's financial
31 rights and requires the limited cooperative association to pay over to the
32 creditor or receiver, to the extent necessary to satisfy the judgment, any
33 distribution that would otherwise be paid to the judgment debtor.

34 (b) To the extent necessary to effectuate the collection of
35 distributions pursuant to a charging order under subsection (a), the court
36 may:

1 (1) appoint a receiver of the share of the distributions due or
2 to become due to the judgment debtor under the judgment debtor's financial
3 rights, with the power to make all inquiries the judgment debtor might have
4 made; and

5 (2) make all other orders that the circumstances of the case may
6 require to give effect to the charging order.

7 (c) Upon a showing that distributions under a charging order will not
8 pay the judgment debt within a reasonable time, the court may foreclose the
9 lien and order the sale of the financial rights. The purchaser at the
10 foreclosure sale obtains only the financial rights that are subject to the
11 charging order, does not thereby become a member, and is subject to § 4-36-
12 603.

13 (d) At any time before a sale pursuant to a foreclosure, a member or
14 transferee whose financial rights are subject to a charging order under
15 subsection (a) may extinguish the charging order by satisfying the judgment
16 and filing a certified copy of the satisfaction with the court that issued
17 the charging order.

18 (e) At any time before sale pursuant to a foreclosure, the limited
19 cooperative association or one or more members whose financial rights are not
20 subject to the charging order may pay to the judgment creditor the full
21 amount due under the judgment and succeed to the rights of the judgment
22 creditor, including the charging order. Unless the organic rules otherwise
23 provide, the association may act under this subsection only with the consent
24 of all members whose financial rights are not subject to the charging order.

25 (f) This chapter does not deprive any member or transferee of the
26 benefit of any exemption laws applicable to the member's or transferee's
27 financial rights.

28 (g) This section provides the exclusive remedy by which a judgment
29 creditor of a member or transferee may satisfy the judgment from the member's
30 or transferee's financial rights.

31
32 SUBCHAPTER 7 – MARKETING CONTRACTS

33 4-36-701. Authority.

34 In this subchapter, "marketing contract" means a contract between a
35 limited cooperative association and another person, that need not be a patron
36 member:

1 (1) requiring the other person to sell, or deliver for sale or
2 marketing on the person's behalf, a specified part of the person's products,
3 commodities, or goods exclusively to or through the association or any
4 facilities furnished by the association; or

5 (2) authorizing the association to act for the person in any
6 manner with respect to the products, commodities, or goods.

7
8 4-36-702. Marketing contracts.

9 (a) If a marketing contract provides for the sale of products,
10 commodities, or goods to a limited cooperative association, the sale
11 transfers title to the association upon delivery or at any other specific
12 time expressly provided by the contract.

13 (b) A marketing contract may:

14 (1) authorize a limited cooperative association to create an
15 enforceable security interest in the products, commodities, or goods
16 delivered; and

17 (2) allow the association to sell the products, commodities, or
18 goods delivered and pay the sales price on a pooled or other basis after
19 deducting selling costs, processing costs, overhead, expenses, and other
20 charges.

21 (c) Some or all of the provisions of a marketing contract between a
22 patron member and a limited cooperative association may be contained in the
23 organic rules.

24
25 4-36-703. Duration of marketing contract.

26 The initial duration of a marketing contract may not exceed 10 years,
27 but the contract may be self-renewing for additional periods not exceeding
28 five years each. Unless the contract provides for another manner or time for
29 termination, either party may terminate the contract by giving notice in a
30 record at least 90 days before the end of the current term.

31
32 4-36-704. Remedies for breach of contract.

33 (a) Damages to be paid to a limited cooperative association for breach
34 or anticipatory repudiation of a marketing contract may be liquidated, but
35 only at an amount or under a formula that is reasonable in light of the
36 actual or anticipated harm caused by the breach or repudiation. A provision

1 that so provides is not a penalty.

2 (b) Upon a breach of a marketing contract, whether by anticipatory
3 repudiation or otherwise, a limited cooperative association may seek:

4 (1) an injunction to prevent further breach; and

5 (2) specific performance.

6 (c) The remedies in this section are in addition to any other remedies
7 available to an association under law other than this chapter.

8
9 SUBCHAPTER 8 – DIRECTORS AND OFFICERS

10 4-36-801. Board of directors.

11 (a) A limited cooperative association must have a board of directors
12 of at least three individuals, unless the association has fewer than three
13 members. If the association has fewer than three members, the number of
14 directors may not be fewer than the number of members.

15 (b) The affairs of a limited cooperative association must be managed
16 by, or under the direction of, the board of directors. The board may adopt
17 policies and procedures that do not conflict with the organic rules or this
18 chapter.

19 (c) An individual is not an agent for a limited cooperative
20 association solely by being a director.

21
22 4-36-802. No liability as director for limited cooperative
23 association's obligations.

24 A debt, obligation, or other liability of a limited cooperative
25 association is solely that of the association and is not a debt, obligation,
26 or liability of a director solely by reason of being a director. An
27 individual is not personally liable, directly or indirectly, for an
28 obligation of an association solely by reason of being a director.

29
30 4-36-803. Qualifications of directors.

31 (a) Unless the organic rules otherwise provide, and subject to
32 subsection (c), each director of a limited cooperative association must be an
33 individual who is a member of the association or an individual who is
34 designated by a member that is not an individual for purposes of qualifying
35 and serving as a director. Initial directors need not be members.

36 (b) Unless the organic rules otherwise provide, a director may be an

1 officer or employee of the limited cooperative association.

2 (c) If the organic rules provide for nonmember directors, the number
3 of nonmember directors may not exceed:

4 (1) one, if there are two through four directors;

5 (2) two, if there are five through eight directors; or

6 (3) one-third of the total number of directors if there are at
7 least nine directors.

8 (d) The organic rules may provide qualifications for directors in
9 addition to those in this section.

10
11 4-36-804. Election of directors and composition of board.

12 (a) Unless the organic rules require a greater number:

13 (1) the number of directors that must be patron members may not
14 be fewer than:

15 (A) one, if there are two or three directors;

16 (B) two, if there are four or five directors;

17 (C) three, if there are six through eight directors; or

18 (D) one-third of the directors if there are at least nine
19 directors; and

20 (2) a majority of the board of directors must be elected
21 exclusively by patron members.

22 (b) Unless the organic rules otherwise provide, if a limited
23 cooperative association has investor members, the directors who are not
24 elected exclusively by patron members are elected by the investor members.

25 (c) Subject to subsection (a), the organic rules may provide for the
26 election of all or a specified number of directors by one or more districts
27 or classes of members.

28 (d) Subject to subsection (a), the organic rules may provide for the
29 nomination or election of directors by districts or classes, directly or by
30 district delegates.

31 (e) If a class of members consists of a single member, the organic
32 rules may provide for the member to appoint a director or directors.

33 (f) Unless the organic rules otherwise provide, cumulative voting for
34 directors is prohibited.

35 (g) Except as otherwise provided by the organic rules, subsection (e),
36 or §§ 4-36-303, 4-36-516, 4-36-517, and 4-36-809, member directors must be

1 elected at an annual members meeting.

2
3 4-36-805. Term of director.

4 (a) Unless the organic rules otherwise provide, and subject to
5 subsections (c) and (d) and § 4-36-303(c), the term of a director expires at
6 the annual members meeting following the director's election or appointment.
7 The term of a director may not exceed three years.

8 (b) Unless the organic rules otherwise provide, a director may be
9 reelected.

10 (c) Except as otherwise provided in subsection (d), a director
11 continues to serve until a successor director is elected or appointed and
12 qualifies or the director is removed, resigns, is adjudged incompetent, or
13 dies.

14 (d) Unless the organic rules otherwise provide, a director does not
15 serve the remainder of the director's term if the director ceases to qualify
16 to be a director.

17
18 4-36-806. Resignation of director.

19 A director may resign at any time by giving notice in a record to the
20 limited cooperative association. Unless the notice states a later effective
21 date, a resignation is effective when the notice is received by the
22 association.

23
24 4-36-807. Removal of director.

25 Unless the organic rules otherwise provide, the following rules apply:

26 (1) Members may remove a director with or without cause.

27 (2) A member or members holding at least 10 percent of the total
28 voting power entitled to be voted in the election of a director may demand
29 removal of the director by one or more signed petitions submitted to the
30 officer of the limited cooperative association charged with keeping its
31 records.

32 (3) Upon receipt of a petition for removal of a director, an
33 officer of the association or the board of directors shall:

34 (A) call a special meeting of members to be held not later
35 than 90 days after receipt of the petition by the association; and

36 (B) mail or otherwise transmit or deliver in a record to

1 the members entitled to vote on the removal, and to the director to be
2 removed, notice of the meeting which complies with § 4-36-508.

3 (4) A director is removed if the votes in favor of removal are
4 equal to or greater than the votes required to elect the director.

5
6 4-36-808. Suspension of director by board.

7 (a) A board of directors may suspend a director if, considering the
8 director's course of conduct and the inadequacy of other available remedies,
9 immediate suspension is necessary for the best interests of the association
10 and the director is engaging, or has engaged, in:

11 (1) fraudulent conduct with respect to the association or its
12 members;

13 (2) gross abuse of the position of director;

14 (3) intentional or reckless infliction of harm on the
15 association; or

16 (4) any other behavior, act, or omission as provided by the
17 organic rules.

18 (b) A suspension under subsection (a) is effective for 30 days unless
19 the board of directors calls and gives notice of a special meeting of members
20 for removal of the director before the end of the 30-day period in which case
21 the suspension is effective until adjournment of the meeting or the director
22 is removed.

23
24 4-36-809. Vacancy on board.

25 (a) Unless the organic rules otherwise provide, a vacancy on the board
26 of directors must be filled:

27 (1) within a reasonable time by majority vote of the remaining
28 directors until the next annual members meeting or a special meeting of
29 members called to fill the vacancy; and

30 (2) for the unexpired term by members at the next annual members
31 meeting or a special meeting of members called to fill the vacancy.

32 (b) Unless the organic rules otherwise provide, if a vacating director
33 was elected or appointed by a class of members or a district:

34 (1) the new director must be of that class or district; and

35 (2) the selection of the director for the unexpired term must be
36 conducted in the same manner as would the selection for that position without

1 a vacancy.

2 (c) If a member appointed a vacating director, the organic rules may
3 provide for that member to appoint a director to fill the vacancy.

4
5 4-36-810. Remuneration of directors.

6 Unless the organic rules otherwise provide, the board of directors may
7 set the remuneration of directors and of nondirector committee members
8 appointed under § 4-36-817(a).

9
10 4-36-811. Meetings.

11 (a) A board of directors shall meet at least annually and may hold
12 meetings inside or outside this state.

13 (b) Unless the organic rules otherwise provide, a board of directors
14 may permit directors to attend or conduct board meetings through the use of
15 any means of communication, if all directors attending the meeting can
16 communicate with each other during the meeting.

17
18 4-36-812. Action without meeting.

19 (a) Unless prohibited by the organic rules, any action that may be
20 taken by a board of directors may be taken without a meeting if each director
21 consents in a record to the action.

22 (b) Consent under subsection (a) may be withdrawn by a director in a
23 record at any time before the limited cooperative association receives
24 consent from all directors.

25 (c) A record of consent for any action under subsection (a) may
26 specify the effective date or time of the action.

27
28 4-36-813. Meetings and notice.

29 (a) Unless the organic rules otherwise provide, a board of directors
30 may establish a time, date, and place for regular board meetings, and notice
31 of the time, date, place, or purpose of those meetings is not required.

32 (b) Unless the organic rules otherwise provide, notice of the time,
33 date, and place of a special meeting of a board of directors must be given to
34 all directors at least three days before the meeting, the notice must contain
35 a statement of the purpose of the meeting, and the meeting is limited to the
36 matters contained in the statement.

1
2 4-36-814. Waiver of notice of meeting.

3 (a) Unless the organic rules otherwise provide, a director may waive
4 any required notice of a meeting of the board of directors in a record
5 before, during, or after the meeting.

6 (b) Unless the organic rules otherwise provide, a director's
7 participation in a meeting is a waiver of notice of that meeting unless:

8 (1) the director objects to the meeting at the beginning of the
9 meeting or promptly upon the director's arrival at the meeting and does not
10 thereafter vote in favor of or otherwise assent to the action taken at the
11 meeting; or

12 (2) the director promptly objects upon the introduction of any
13 matter for which notice under § 4-36-813 has not been given and does not
14 thereafter vote in favor of or otherwise assent to the action taken on the
15 matter.

16
17 4-36-815. Quorum.

18 (a) Unless the articles of organization provide for a greater number,
19 a majority of the total number of directors specified by the organic rules
20 constitutes a quorum for a meeting of the directors.

21 (b) If a quorum of the board of directors is present at the beginning
22 of a meeting, any action taken by the directors present is valid even if
23 withdrawal of directors originally present results in the number of directors
24 being fewer than the number required for a quorum.

25 (c) A director present at a meeting but objecting to notice under § 4-
26 36-814(b)(1) or (2) does not count toward a quorum.

27
28 4-36-816. Voting.

29 (a) Each director shall have one vote for purposes of decisions made
30 by the board of directors.

31 (b) Unless the organic rules otherwise provide, the affirmative vote
32 of a majority of directors present at a meeting is required for action by the
33 board of directors.

34
35 4-36-817. Committees.

36 (a) Unless the organic rules otherwise provide, a board of directors

1 may create one or more committees and appoint one or more individuals to
2 serve on a committee.

3 (b) Unless the organic rules otherwise provide, an individual
4 appointed to serve on a committee of a limited cooperative association need
5 not be a director or member.

6 (c) An individual who is not a director and is serving on a committee
7 has the same rights, duties, and obligations as a director serving on the
8 committee.

9 (d) Unless the organic rules otherwise provide each committee of a
10 limited cooperative association may exercise the powers delegated to it by
11 the board of directors, but a committee may not:

12 (1) approve allocations or distributions except according to a
13 formula or method prescribed by the board of directors;

14 (2) approve or propose to members action requiring approval of
15 members; or

16 (3) fill vacancies on the board of directors or any of its
17 committees.

18
19 4-36-818. Standards of conduct and liability.

20 Except as otherwise provided in § 4-36-820:

21 (1) the discharge of the duties of a director or member of a
22 committee of the board of directors is governed by the law applicable to
23 directors of entities organized under the Arkansas Business Corporation Act
24 (1987), § 4-27-101 et seq.; and

25 (2) the liability of a director or member of a committee of the
26 board of directors is governed by the law applicable to directors of entities
27 organized under the Arkansas Business Corporation Act (1987), § 4-27-101 et
28 seq.

29
30 4-36-819. Conflict of interest.

31 (a) The law applicable to conflicts of interest between a director of
32 an entity organized under the Arkansas Business Corporation Act (1987), § 4-
33 27-101 et seq., governs conflicts of interest between a limited cooperative
34 association and a director or member of a committee of the board of
35 directors.

36 (b) A director does not have a conflict of interest under this chapter

1 or the organic rules solely because the director's conduct relating to the
2 duties of the director may further the director's own interest.

3
4 4-36-820. Other considerations of directors.

5 Unless the articles of organization otherwise provide, in considering
6 the best interests of a limited cooperative association, a director of the
7 association in discharging the duties of director, in conjunction with
8 considering the long and short term interest of the association and its
9 patron members, may consider:

10 (1) the interest of employees, customers, and suppliers of the
11 association;

12 (2) the interest of the community in which the association
13 operates; and

14 (3) other cooperative principles and values that may be applied
15 in the context of the decision.

16
17 4-36-821. Right of director or committee member to information.

18 A director or a member of a committee appointed under § 4-36-817 may
19 obtain, inspect, and copy all information regarding the state of activities
20 and financial condition of the limited cooperative association and other
21 information regarding the activities of the association if the information is
22 reasonably related to the performance of the director's duties as director or
23 the committee member's duties as a member of the committee. Information
24 obtained in accordance with this section may not be used in any manner that
25 would violate any duty of or to the association.

26
27 4-36-822. Appointment and authority of officers.

28 (a) A limited cooperative association has the officers:

29 (1) provided in the organic rules; or

30 (2) established by the board of directors in a manner not
31 inconsistent with the organic rules.

32 (b) The organic rules may designate or, if the rules do not designate,
33 the board of directors shall designate, one of the association's officers for
34 preparing all records required by § 4-36-114 and for the authentication of
35 records.

36 (c) Unless the organic rules otherwise provide, the board of directors

1 shall appoint the officers of the limited cooperative association.

2 (d) Officers of a limited cooperative association shall perform the
3 duties the organic rules prescribe or as authorized by the board of directors
4 not in a manner inconsistent with the organic rules.

5 (e) The election or appointment of an officer of a limited cooperative
6 association does not of itself create a contract between the association and
7 the officer.

8 (f) Unless the organic rules otherwise provide, an individual may
9 simultaneously hold more than one office in a limited cooperative
10 association.

11
12 4-36-823. Resignation and removal of officers.

13 (a) The board of directors may remove an officer at any time with or
14 without cause.

15 (b) An officer of a limited cooperative association may resign at any
16 time by giving notice in a record to the association. Unless the notice
17 specifies a later time, the resignation is effective when the notice is
18 given.

19
20 SUBCHAPTER 9 – INDEMNIFICATION

21 4-36-901. Indemnification.

22 (a) Indemnification of an individual who has incurred liability or is
23 a party, or is threatened to be made a party, to litigation because of the
24 performance of a duty to, or activity on behalf of, a limited cooperative
25 association is governed by the Arkansas Business Corporation Act (1987), § 4-
26 27-101 et seq.

27 (b) A limited cooperative association may purchase and maintain
28 insurance on behalf of any individual against liability asserted against or
29 incurred by the individual to the same extent and subject to the same
30 conditions as provided by the Arkansas Business Corporation Act (1987), § 4-
31 27-101 et seq.

32
33 SUBCHAPTER 10 – CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

34 4-36-1001. Members' contributions.

35 The organic rules must establish the amount, manner, or method of
36 determining any contribution requirements for members or must authorize the

1 board of directors to establish the amount, manner, or other method of
2 determining any contribution requirements for members.

3
4 4-36-1002. Contribution and valuation.

5 (a) Unless the organic rules otherwise provide, the contributions of a
6 member to a limited cooperative association may consist of tangible or
7 intangible property or other benefit to the association, including money,
8 labor or other services performed or to be performed, promissory notes, other
9 agreements to contribute money or property, and contracts to be performed.

10 (b) The receipt and acceptance of contributions and the valuation of
11 contributions must be reflected in a limited cooperative association's
12 records.

13 (c) Unless the organic rules otherwise provide, the board of directors
14 shall determine the value of a member's contributions received or to be
15 received and the determination by the board of directors of valuation is
16 conclusive for purposes of determining whether the member's contribution
17 obligation has been met.

18
19 4-36-1003. Contribution agreements.

20 (a) Except as otherwise provided in the agreement, the following rules
21 apply to an agreement made by a person before formation of a limited
22 cooperative association to make a contribution to the association:

23 (1) The agreement is irrevocable for six months after the
24 agreement is signed by the person unless all parties to the agreement consent
25 to the revocation.

26 (2) If a person does not make a required contribution:

27 (A) the person is obligated, at the option of the
28 association, once formed, to contribute money equal to the value of that part
29 of the contribution that has not been made, and the obligation may be
30 enforced as a debt to the association; or

31 (B) the association, once formed, may rescind the
32 agreement if the debt remains unpaid more than 20 days after the association
33 demands payment from the person, and upon rescission the person has no
34 further rights or obligations with respect to the association.

35 (b) Unless the organic rules or an agreement to make a contribution to
36 a limited cooperative association otherwise provide, if a person does not

1 make a required contribution to an association, the person or the person's
2 estate is obligated, at the option of the association, to contribute money
3 equal to the value of the part of the contribution which has not been made.

4
5 4-36-1004. Allocations of profits and losses.

6 (a) The organic rules may provide for allocating profits of a limited
7 cooperative association among members, among persons that are not members but
8 conduct business with the association, to an unallocated account, or to any
9 combination thereof. Unless the organic rules otherwise provide, losses of
10 the association must be allocated in the same proportion as profits.

11 (b) Unless the organic rules otherwise provide, all profits and losses
12 of a limited cooperative association must be allocated to patron members.

13 (c) If a limited cooperative association has investor members, the
14 organic rules may not reduce the allocation to patron members to less than 50
15 percent of profits. For purposes of this subsection, the following rules
16 apply:

17 (1) amounts paid or due on contracts for the delivery to the
18 association by patron members of products, goods, or services are not
19 considered amounts allocated to patron members.

20 (2) amounts paid, due, or allocated to investor members as a
21 stated fixed return on equity are not considered amounts allocated to
22 investor members.

23 (d) Unless prohibited by the organic rules, in determining the profits
24 for allocation under subsections (a), (b), and (c), the board of directors
25 may first deduct and set aside a part of the profits to create or accumulate:

26 (1) an unallocated capital reserve; and

27 (2) reasonable unallocated reserves for specific purposes,
28 including expansion and replacement of capital assets; education, training,
29 cooperative development; creation and distribution of information concerning
30 principles of cooperation; and community responsibility.

31 (e) Subject to subsections (b) and (f) and the organic rules, the
32 board of directors shall allocate the amount remaining after any deduction or
33 setting aside of profits for unallocated reserves under subsection (d):

34 (1) to patron members in the ratio of each member's patronage to
35 the total patronage of all patron members during the period for which
36 allocations are to be made; and

1 (2) to investor members, if any, in the ratio of each investor
2 member's contributions to the total contributions of all investor members.

3 (f) For purposes of allocation of profits and losses or specific items
4 of profits or losses of a limited cooperative association to members, the
5 organic rules may establish allocation units or methods based on separate
6 classes of members or, for patron members, on class, function, division,
7 district, department, allocation units, pooling arrangements, members'
8 contributions, or other equitable methods.

9
10 4-36-1005. Distributions.

11 (a) Unless the organic rules otherwise provide and subject to § 4-36-
12 1007, the board of directors may authorize, and the limited cooperative
13 association may make, distributions to members.

14 (b) Unless the organic rules otherwise provide, distributions to
15 members may be made in any form, including money, capital credits, allocated
16 patronage equities, revolving fund certificates, and the limited cooperative
17 association's own or other securities.

18
19 4-36-1006. Redemption or repurchase.

20 Property distributed to a member by a limited cooperative association,
21 other than money, may be redeemed or repurchased as provided in the organic
22 rules but a redemption or repurchase may not be made without authorization by
23 the board of directors. The board may withhold authorization for any reason
24 in its sole discretion. A redemption or repurchase is treated as a
25 distribution for purposes of § 4-36-1007.

26
27 4-36-1007. Limitations on distributions.

28 (a) A limited cooperative association may not make a distribution if,
29 after the distribution:

30 (1) the association would not be able to pay its debts as they
31 become due in the ordinary course of the association's activities; or

32 (2) the association's assets would be less than the sum of its
33 total liabilities.

34 (b) A limited cooperative association may base a determination that a
35 distribution is not prohibited under subsection (a) on financial statements
36 prepared on the basis of accounting practices and principles that are

1 reasonable in the circumstances or on a fair valuation or other method that
2 is reasonable in the circumstances.

3 (c) Except as otherwise provided in subsection (d), the effect of a
4 distribution allowed under subsection (b) is measured:

5 (1) in the case of distribution by purchase, redemption, or
6 other acquisition of financial rights in the limited cooperative association,
7 as of the date money or other property is transferred or debt is incurred by
8 the association; and

9 (2) in all other cases, as of the date:

10 (A) the distribution is authorized, if the payment occurs
11 not later than 120 days after that date; or

12 (B) the payment is made, if payment occurs more than 120
13 days after the distribution is authorized.

14 (d) If indebtedness is issued as a distribution, each payment of
15 principal or interest on the indebtedness is treated as a distribution, the
16 effect of which is measured on the date the payment is made.

17 (e) For purposes of this section, "distribution" does not include
18 reasonable amounts paid to a member in the ordinary course of business as
19 payment or compensation for commodities, goods, past or present services, or
20 reasonable payments made in the ordinary course of business under a bona fide
21 retirement or other benefits program.

22
23 4-36-1008. Liability for improper distributions – Limitation of
24 action.

25 (a) A director who consents to a distribution that violates § 4-36-
26 1007 is personally liable to the limited cooperative association for the
27 amount of the distribution which exceeds the amount that could have been
28 distributed without the violation if it is established that in consenting to
29 the distribution the director failed to comply with § 4-36-818 or § 4-36-819.

30 (b) A member or transferee of financial rights which received a
31 distribution knowing that the distribution was made in violation of § 4-36-
32 1007 is personally liable to the limited cooperative association to the
33 extent the distribution exceeded the amount that could have been properly
34 paid.

35 (c) A director against whom an action is commenced under subsection
36 (a) may:

1 (1) implead in the action any other director who is liable under
2 subsection (a) and compel contribution from the person; and

3 (2) implead in the action any person that is liable under
4 subsection (b) and compel contribution from the person in the amount the
5 person received as described in subsection (b).

6 (d) An action under this section is barred if it is commenced later
7 than two years after the distribution.

8
9 4-36-1009. Relation to state securities law.

10 Patron members' interest in a limited cooperative association has the
11 same exemption as provided for substantially similar interests in
12 cooperatives under the Arkansas Securities Act, § 23-42-101 et seq.

13
14 4-36-1010. [Reserved.]

15
16 SUBCHAPTER 11 – DISSOCIATION

17 4-36-1101. Member's dissociation.

18 (a) A person has the power to dissociate as a member at any time,
19 rightfully or wrongfully, by express will.

20 (b) Unless the organic rules otherwise provide, a member's
21 dissociation from a limited cooperative association is wrongful only if the
22 dissociation:

23 (1) breaches an express provision of the organic rules; or

24 (2) occurs before the termination of the limited cooperative
25 association and:

26 (A) the person is expelled as a member under subsection
27 (d)(3) or (4); or

28 (B) in the case of a person that is not an individual,
29 trust other than a business trust, or estate, the person is expelled or
30 otherwise dissociated as a member because it dissolved or terminated in bad
31 faith.

32 (c) Unless the organic rules otherwise provide, a person that
33 wrongfully dissociates as a member is liable to the limited cooperative
34 association for damages caused by the dissociation. The liability is in
35 addition to any other debt, obligation, or liability of the person to the
36 association.

1 (d) A member is dissociated from the limited cooperative association
2 as a member when:

3 (1) the association receives notice in a record of the member's
4 express will to dissociate as a member, or if the member specifies in the
5 notice an effective date later than the date the association received notice,
6 on that later date;

7 (2) an event stated in the organic rules as causing the member's
8 dissociation as a member occurs;

9 (3) the member is expelled as a member under the organic rules;

10 (4) the member is expelled as a member by the board of directors

11 because:

12 (A) it is unlawful to carry on the association's
13 activities with the member as a member;

14 (B) there has been a transfer of all the member's
15 financial rights in the association, other than:

16 (i) a creation or perfection of a security interest;

17 or

18 (ii) a charging order in effect under § 4-36-605
19 which has not been foreclosed;

20 (C) the member is a limited liability company,
21 association, or partnership, which has been dissolved, and its business is
22 being wound up; or

23 (D) the member is a corporation or cooperative and:

24 (i) the member filed a certificate of dissolution or
25 the equivalent, or the jurisdiction of formation revoked the association's
26 charter or right to conduct business;

27 (ii) the association sends a notice to the member
28 that it will be expelled as a member for a reason described in clause (i);
29 and

30 (iii) not later than 90 days after the notice was
31 sent under clause (ii), the member did not revoke its certificate of
32 dissolution or the equivalent, or the jurisdiction of formation did not
33 reinstate the association's charter or right to conduct business; or

34 (E) the member is an individual and is adjudged
35 incompetent;

36 (5) in the case of a member who is an individual, the individual

1 dies;

2 (6) in the case of a member that is a trust or is acting as a
3 member by virtue of being a trustee of a trust, all the trust's financial
4 rights in the association are distributed;

5 (7) in the case of a member that is an estate, the estate's
6 entire financial interest in the association is distributed;

7 (8) in the case of a member that is not an individual,
8 partnership, limited liability company, cooperative, corporation, trust, or
9 estate, the member is terminated; or

10 (9) the association's participation in a merger if, under the
11 plan of merger as approved under § 4-36-1601 et seq., the member ceases to be
12 a member.

13
14 4-36-1102. Effect of dissociation as member.

15 (a) Upon a member's dissociation:

16 (1) subject to § 4-36-1103, the person has no further rights as
17 a member; and

18 (2) subject to § 4-36-1103 and § 4-36-1601 et seq., any
19 financial rights owned by the person in the person's capacity as a member
20 immediately before dissociation are owned by the person as a transferee.

21 (b) A person's dissociation as a member does not of itself discharge
22 the person from any debt, obligation, or liability to the limited cooperative
23 association which the person incurred under the organic rules, by contract,
24 or by other means while a member.

25
26 4-36-1103. Power of estate of member.

27 Unless the organic rules provide for greater rights, if a member is
28 dissociated because of death, dies or is expelled by reason of being adjudged
29 incompetent, the member's personal representative or other legal
30 representative may exercise the rights of a transferee of the member's
31 financial rights and, for purposes of settling the estate of a deceased
32 member, may exercise the informational rights of a current member to obtain
33 information under § 4-36-505.

34
35 SUBCHAPTER 12 – DISSOLUTION

36 4-36-1201. Dissolution and winding up.

1 A limited cooperative association is dissolved only as provided in this
2 subchapter and upon dissolution winds up in accordance with this subchapter.

3
4 4-36-1202. Nonjudicial dissolution.

5 Except as otherwise provided in §§ 4-36-1203 and 4-36-1211, a limited
6 cooperative association is dissolved and its activities must be wound up:

7 (1) upon the occurrence of an event or at a time specified in
8 the articles of organization;

9 (2) upon the action of the association's organizers, board of
10 directors, or members under § 4-36-1204 or § 4-36-1205; or

11 (3) 90 days after the dissociation of a member, which results in
12 the association having one patron member and no other members, unless the
13 association:

14 (A) has a sole member that is a cooperative; or

15 (B) not later than the end of the 90-day period, admits at
16 least one member in accordance with the organic rules and has at least two
17 members, at least one of which is a patron member.

18
19 4-36-1203. Judicial dissolution.

20 The circuit court may dissolve a limited cooperative association or
21 order any action that under the circumstances is appropriate and equitable:

22 (1) in a proceeding initiated by the Attorney General, if:

23 (A) the association obtained its articles of organization
24 through fraud; or

25 (B) the association has continued to exceed or abuse the
26 authority conferred upon it by law; or

27 (2) in a proceeding initiated by a member, if:

28 (A) the directors are deadlocked in the management of the
29 association's affairs, the members are unable to break the deadlock, and
30 irreparable injury to the association is occurring or is threatened because
31 of the deadlock;

32 (B) the directors or those in control of the association
33 have acted, are acting, or will act in a manner that is illegal, oppressive,
34 or fraudulent;

35 (C) the members are deadlocked in voting power and have
36 failed to elect successors to directors whose terms have expired for two

1 consecutive periods during which annual members meetings were held or were to
2 be held; or

3 (D) the assets of the association are being misapplied or
4 wasted.

5
6 4-36-1204. Voluntary dissolution before commencement of activity.

7 A majority of the organizers or initial directors of a
8 limited cooperative association that has not yet begun business activity or
9 the conduct of its affairs may dissolve the association.

10
11 4-36-1205. Voluntary dissolution by the board and members.

12 (a) Except as otherwise provided in § 4-36-1204, for a limited
13 cooperative association to voluntarily dissolve:

14 (1) a resolution to dissolve must be approved by a majority vote
15 of the board of directors unless a greater percentage is required by the
16 organic rules;

17 (2) the board of directors must call a members meeting to
18 consider the resolution, to be held not later than 90 days after adoption of
19 the resolution; and

20 (3) the board of directors must mail or otherwise transmit or
21 deliver to each member in a record that complies with § 4-36-508:

22 (A) the resolution required by paragraph (1);

23 (B) a recommendation that the members vote in favor of the
24 resolution or, if the board determines that because of conflict of interest
25 or other special circumstances it should not make a favorable recommendation,
26 the basis of that determination; and

27 (C) notice of the members meeting, which must be given in
28 the same manner as notice of a special meeting of members.

29 (b) Subject to subsection (c), a resolution to dissolve must be
30 approved by:

31 (1) at least two-thirds of the voting power of members present
32 at a members meeting called under subsection (a)(2); and

33 (2) if the limited cooperative association has investor members,
34 at least a majority of the votes cast by patron members, unless the organic
35 rules require a greater percentage.

36 (c) The organic rules may require that the percentage of votes under

1 subsection (b)(1) is:

2 (1) a different percentage that is not less than a majority of
3 members voting at the meeting; or

4 (2) measured against the voting power of all members; or

5 (3) a combination of paragraphs (1) and (2).

6
7 4-36-1206. Winding up.

8 (a) A limited cooperative association continues after dissolution only
9 for purposes of winding up its activities.

10 (b) In winding up a limited cooperative association's activities, the
11 board of directors shall cause the association to:

12 (1) discharge its liabilities, settle and close its activities,
13 and marshal and distribute its assets;

14 (2) preserve the association or its property as a going concern
15 for no more than a reasonable time;

16 (3) prosecute and defend actions and proceedings;

17 (4) transfer association property; and

18 (5) perform other necessary acts.

19 (c) After dissolution and upon application of a limited cooperative
20 association, a member, or a holder of financial rights, the circuit court may
21 order judicial supervision of the winding up of the association, including
22 the appointment of a person to wind up the association's activities, if:

23 (1) after a reasonable time, the association has not wound up
24 its activities; or

25 (2) the applicant establishes other good cause.

26 (d) If a person is appointed pursuant to subsection (c) to wind up the
27 activities of a limited cooperative association, the association shall
28 promptly deliver to the Secretary of State for filing an amendment to the
29 articles of organization to reflect the appointment.

30
31 4-36-1207. Distribution of assets in winding up limited cooperative
32 association.

33 (a) In winding up a limited cooperative association's business, the
34 association shall apply its assets to discharge its obligations to creditors,
35 including members that are creditors. The association shall apply any
36 remaining assets to pay in money the net amount distributable to members in

1 accordance with their right to distributions under subsection (b).

2 (b) Unless the organic rules otherwise provide, in this subsection
3 “financial interests” means the amounts recorded in the names of members in
4 the records of a limited cooperative association at the time a distribution
5 is made, including amounts paid to become a member, amounts allocated but not
6 distributed to members, and amounts of distributions authorized but not yet
7 paid to members. Unless the organic rules otherwise provide, each member is
8 entitled to a distribution from the association of any remaining assets in
9 the proportion of the member’s financial interests to the total financial
10 interests of the members after all other obligations are satisfied.

11
12 4-36-1208. Known claims against dissolved limited cooperative
13 association.

14 (a) Subject to subsection (d), a dissolved limited cooperative
15 association may dispose of the known claims against it by following the
16 procedure in subsections (b) and (c).

17 (b) A dissolved limited cooperative association may notify its known
18 claimants of the dissolution in a record. The notice must:

19 (1) specify that a claim be in a record;

20 (2) specify the information required to be included in the
21 claim;

22 (3) provide an address to which the claim must be sent;

23 (4) state the deadline for receipt of the claim, which may not
24 be less than 120 days after the date the notice is received by the claimant;
25 and

26 (5) state that the claim will be barred if not received by the
27 deadline.

28 (c) A claim against a dissolved limited cooperative association is
29 barred if the requirements of subsection (b) are met, and:

30 (1) the association is not notified of the claimant’s claim, in
31 a record, by the deadline specified in the notice under subsection (b)(4);

32 (2) in the case of a claim that is timely received but rejected
33 by the association, the claimant does not commence an action to enforce the
34 claim against the association within 90 days after receipt of the notice of
35 the rejection; or

36 (3) if a claim is timely received but is neither accepted nor

1 rejected by the association within 120 days after the deadline for receipt of
2 claims, the claimant does not commence an action to enforce the claim against
3 the association:

4 (A) after the 120-day period; and

5 (B) within 90 days after the 120-day period.

6 (d) This section does not apply to a claim based on an event occurring
7 after the date of dissolution or a liability that is contingent on that date.

8
9 4-36-1209. Other claims against dissolved limited cooperative
10 association.

11 (a) A dissolved limited cooperative association may publish notice of
12 its dissolution and request persons having claims against the association to
13 present them in accordance with the notice.

14 (b) A notice under subsection (a) must:

15 (1) be published at least once in a newspaper of general
16 circulation in the county in which the dissolved limited cooperative
17 association's principal office is located or, if the association does not
18 have a principal office in this state, in the county in which the
19 association's designated office is or was last located;

20 (2) describe the information required to be contained in a claim
21 and provide an address to which the claim is to be sent; and

22 (3) state that a claim against the association is barred unless
23 an action to enforce the claim is commenced not later than three years after
24 publication of the notice.

25 (c) If a dissolved limited cooperative association publishes a notice
26 in accordance with subsection (b), the claim of each of the following
27 claimants is barred unless the claimant commences an action to enforce the
28 claim not later than three years after the first publication date of the
29 notice:

30 (1) a claimant that is entitled to but did not receive notice in
31 a record under § 4-36-1208; and

32 (2) a claimant whose claim is contingent or based on an event
33 occurring after the effective date of dissolution.

34 (d) A claim not barred under this section may be enforced:

35 (1) against a dissolved limited cooperative association, to the
36 extent of its undistributed assets; or

1 (2) if the association's assets have been distributed in
2 connection with winding up the association's activities against a member or
3 holder of financial rights to the extent of that person's proportionate share
4 of the claim or the association's assets distributed to the person in
5 connection with the winding up, whichever is less. The person's total
6 liability for all claims under this subdivision (d)(2) shall not exceed the
7 total amount of assets distributed to the person as part of the winding up of
8 the association.

9
10 4-36-1210. Court proceeding.

11 (a) Upon application by a dissolved limited cooperative association
12 that has published a notice under § 4-36-1209, the circuit court in the
13 county where the association's principal office is located or, if the
14 association does not have a principal office in this state where its
15 designated office in this state is located, may determine the amount and form
16 of security to be provided for payment of claims against the association that
17 are contingent, have not been made known to the association, or are based on
18 an event occurring after the effective date of dissolution but that, based on
19 the facts known to the association, are reasonably anticipated to arise after
20 the effective date of dissolution.

21 (b) Not later than 10 days after filing an application under
22 subsection (a), a dissolved limited cooperative association shall give notice
23 of the proceeding to each known claimant holding a contingent claim.

24 (c) The court may appoint a representative in a proceeding brought
25 under this section to represent all claimants whose identities are unknown.
26 The dissolved limited cooperative association shall pay reasonable fees and
27 expenses of the representative, including all reasonable attorney's and
28 expert witness fees.

29 (d) Provision by the dissolved limited cooperative association for
30 security in the amount and the form ordered by the court satisfies the
31 association's obligations with respect to claims that are contingent, have
32 not been made known to the association, or are based on an event occurring
33 after the effective date of dissolution, and the claims may not be enforced
34 against a member that received a distribution.

35
36 4-36-1211. Administrative dissolution.

1 (a) The Secretary of State may dissolve a limited cooperative
2 association administratively if the association does not:

3 (1) pay, not later than 60 days after the due date, any fee,
4 tax, or penalty due to the Secretary of State under this chapter or other
5 law; or

6 (2) deliver not later than 60 days after the due date its annual
7 report to the Secretary of State.

8 (b) If the Secretary of State determines that a ground exists for
9 dissolving a limited cooperative association administratively, the Secretary
10 of State shall file a record of the determination and serve the association
11 with a copy of the record.

12 (c) If, not later than 60 days after service of a copy of the
13 Secretary of State's determination under subsection (b), the association does
14 not correct each ground for dissolution or demonstrate to the satisfaction of
15 the Secretary of State that each uncorrected ground determined by the
16 Secretary of State does not exist, the Secretary of State shall dissolve the
17 association administratively by preparing and filing a declaration of
18 dissolution which states the grounds for dissolution. The Secretary of State
19 shall serve the association with a copy of the declaration.

20 (d) A limited cooperative association that has been dissolved
21 administratively continues its existence only for purposes of winding up its
22 activities.

23 (e) The administrative dissolution of a limited cooperative
24 association does not terminate the authority of its agent for service of
25 process.

26
27 4-36-1212. Reinstatement following administrative dissolution.

28 (a) A limited cooperative association that has been dissolved
29 administratively may apply to the Secretary of State for reinstatement not
30 later than two years after the effective date of dissolution. The
31 application must be delivered to the Secretary of State for filing and state:

32 (1) the name of the association and the effective date of its
33 administrative dissolution;

34 (2) that the grounds for dissolution either did not exist or
35 have been eliminated; and

36 (3) that the association's name satisfies the requirements of §

1 4-36-111.

2 (b) If the Secretary of State determines that an application contains
3 the information required by subsection (a) and that the information is
4 correct, the Secretary of State shall:

- 5 (1) prepare a declaration of reinstatement;
- 6 (2) file the original of the declaration; and
- 7 (3) serve a copy of the declaration on the association.

8 (c) When reinstatement under this section becomes effective, it
9 relates back to and takes effect as of the effective date of the
10 administrative dissolution, and the limited cooperative association may
11 resume or continue its activities as if the administrative dissolution had
12 not occurred.

13
14 4-36-1213. Denial of reinstatement – Appeal.

15 (a) If the Secretary of State denies a limited cooperative
16 association’s application for reinstatement following administrative
17 dissolution, the Secretary of State shall prepare and file a notice that
18 explains the reason for denial and serve the association with a copy of the
19 notice.

20 (b) Not later than 30 days after service of a notice of denial of
21 reinstatement by the Secretary of State, a limited cooperative association
22 may appeal the denial under the Arkansas Administrative Procedure Act, § 25-
23 15-201 et seq.

24
25 4-36-1214. Statement of dissolution.

26 (a) A limited cooperative association that has dissolved or is about
27 to dissolve may deliver to the Secretary of State for filing a statement of
28 dissolution that states:

- 29 (1) the name of the association;
- 30 (2) the date the association dissolved or will dissolve; and
- 31 (3) any other information the association considers relevant.

32 (b) A person has notice of a limited cooperative association’s
33 dissolution on the later of:

- 34 (1) 90 days after a statement of dissolution is filed; or
- 35 (2) the effective date stated in the statement of dissolution.

36

1 4-36-1215. Statement of termination.

2 (a) A dissolved limited cooperative association that has completed
3 winding up may deliver to the Secretary of State for filing a statement of
4 termination that states:

5 (1) the name of the association;

6 (2) the date of filing of its initial articles of organization;

7 and

8 (3) that the association is terminated.

9 (b) The filing of a statement of termination does not itself terminate
10 the limited cooperative association.

11
12 SUBCHAPTER 13 – [RESERVED.]

13
14 SUBCHAPTER 14 – FOREIGN COOPERATIVES

15 4-36-1401. Governing law.

16 (a) The law of the state or other jurisdiction under which a foreign
17 cooperative is organized governs relations among the members of the foreign
18 cooperative and between the members and the foreign cooperative.

19 (b) A foreign cooperative may not be denied a certificate of authority
20 because of any difference between the law of the jurisdiction under which the
21 foreign cooperative is organized and the law of this state.

22 (c) A certificate of authority does not authorize a foreign
23 cooperative to engage in any activity or exercise any power that a limited
24 cooperative association may not engage in or exercise in this state.

25
26 4-36-1402. Application for certificate of authority.

27 (a) Before transacting business in this state, a foreign cooperative
28 shall apply for a certificate of authority by delivering an application to
29 the Secretary of State for filing. The application must state:

30 (1) the name of the foreign cooperative and, if the name does
31 not comply with § 4-36-111, an alternative name adopted pursuant to § 4-36-
32 1405;

33 (2) the name of the state or other jurisdiction under whose law
34 the foreign cooperative is organized;

35 (3) the street address and, if different, mailing address of the
36 principal office and, if the law of the jurisdiction under which the foreign

1 cooperative is organized requires the foreign cooperative to maintain another
2 office in that jurisdiction, the street address and, if different, mailing
3 address of the required office;

4 (4) the street address and, if different, mailing address of the
5 foreign cooperative's designated office and the information concerning its
6 agent for service of process required by § 4-20-105(a);and

7 (5) the name, street address and, if different, mailing address
8 of each of the foreign cooperative's current directors and officers.

9 (b) A foreign cooperative shall deliver with a completed application
10 under subsection (a) a certificate of existence, or a similar record signed
11 by the Secretary of State or other official having custody of the foreign
12 cooperative's publicly filed records in the state or other jurisdiction under
13 whose law the foreign cooperative is organized.

14
15 4-36-1403. Activities not constituting transacting business.

16 (a) Activities of a foreign cooperative which do not constitute
17 transacting business in this state under this subchapter include:

18 (1) maintaining, defending, and settling an action or
19 proceeding;

20 (2) holding meetings of the foreign cooperative's members or
21 directors or carrying on any other activity concerning the foreign
22 cooperative's internal affairs;

23 (3) maintaining accounts in financial institutions;

24 (4) maintaining offices or agencies for the transfer, exchange,
25 and registration of the foreign cooperative's own securities or maintaining
26 trustees or depositories with respect to those securities;

27 (5) selling through independent contractors;

28 (6) soliciting or obtaining orders, whether by mail or
29 electronic means, through employees, agents, or otherwise, if the orders
30 require acceptance outside this state before they become contracts;

31 (7) creating or acquiring indebtedness, mortgages, or security
32 interests in real or personal property;

33 (8) securing or collecting debts or enforcing mortgages or other
34 security interests in property securing the debts, and holding, protecting,
35 and maintaining property so acquired;

36 (9) conducting an isolated transaction that is completed within

1 30 days and is not one in the course of similar transactions; and

2 (10) transacting business in interstate commerce.

3 (b) For purposes of this subchapter, the ownership in this state of
4 income-producing real property or tangible personal property, other than
5 property excluded under subsection (a), constitutes transacting business in
6 this state.

7 (c) This section does not apply in determining the contacts or
8 activities that may subject a foreign cooperative to service of process,
9 taxation, or regulation under law of this state other than this chapter.

10
11 4-36-1404. Issuance of certificate of authority.

12 Unless the Secretary of State determines that an application for a
13 certificate of authority does not comply with the filing requirements of this
14 chapter, the Secretary of State, upon payment by the foreign cooperative of
15 all filing fees, shall file the application, issue a certificate of
16 authority, and send a copy of the filed certificate, together with a receipt
17 for the fees, to the foreign cooperative or its representative.

18
19 4-36-1405. Noncomplying name of foreign cooperative.

20 (a) A foreign cooperative whose name does not comply with § 4-36-111
21 may not obtain a certificate of authority until it adopts, for the purpose of
22 transacting business in this state, an alternative name that complies with §
23 4-36-111. A foreign cooperative that adopts an alternative name under this
24 subsection and then obtains a certificate of authority with that name need
25 not also comply with any other fictitious or assumed name statute of this
26 state. After obtaining a certificate of authority with an alternative name,
27 a foreign cooperative's business in this state must be transacted under that
28 name unless the foreign cooperative is authorized to transact business in
29 this state under another name.

30 (b) If a foreign cooperative authorized to transact business in this
31 state changes its name to one that does not comply with § 4-36-111, it may
32 not thereafter transact business in this state until it complies with
33 subsection (a) and obtains an amended certificate of authority.

34
35 4-36-1406. Revocation of certificate of authority.

36 (a) A certificate of authority may be revoked by the Secretary of

1 State in the manner provided in subsection (b) if the foreign cooperative
2 does not:

3 (1) pay, not later than 60 days after the due date, any fee,
4 tax, or penalty due to the Secretary of State under this chapter or another
5 law of this state other than this chapter;

6 (2) deliver, not later than 60 days after the due date, its
7 annual report;

8 (3) appoint and maintain an agent for service of process; or

9 (4) deliver for filing a statement of change not later than 30
10 days after a change has occurred in the name of the agent or the address of
11 the foreign cooperative's designated office.

12 (b) To revoke a certificate of authority, the Secretary of State must
13 file a notice of revocation and send a copy to the foreign cooperative's
14 registered agent for service of process in this state or, if the foreign
15 cooperative does not appoint and maintain an agent for service of process in
16 this state, to the foreign cooperative's principal office. The notice must
17 state:

18 (1) the revocation's effective date, which must be at least 60
19 days after the date the Secretary of State sends the copy; and

20 (2) the foreign cooperative's noncompliance that is the reason
21 for the revocation.

22 (c) The authority of a foreign cooperative to transact business in
23 this state ceases on the effective date of the notice of revocation unless
24 before that date the foreign cooperative cures each failure to comply stated
25 in the notice. If the foreign cooperative cures the failures, the Secretary
26 of State shall so indicate on the filed notice.

27
28 4-36-1407. Cancellation of certificate of authority – Effect of
29 failure to have certificate.

30 (a) To cancel its certificate of authority, a foreign cooperative must
31 deliver to the Secretary of State for filing a notice of cancellation. The
32 certificate is canceled when the notice becomes effective under § 4-36-203.

33 (b) A foreign cooperative transacting business in this state may not
34 maintain an action or proceeding in this state unless it has a certificate of
35 authority.

36 (c) The failure of a foreign cooperative to have a certificate of

1 authority does not impair the validity of a contract or act of the foreign
2 cooperative or prevent the foreign cooperative from defending an action or
3 proceeding in this state.

4 (d) A member of a foreign cooperative is not liable for the
5 obligations of the foreign cooperative solely by reason of the foreign
6 cooperative's having transacted business in this state without a certificate
7 of authority.

8 (e) If a foreign cooperative transacts business in this state without
9 a certificate of authority or cancels its certificate, for an action arising
10 out of the transaction of business in this state the foreign cooperative may
11 be served with process under § 4-20-113 if the foreign cooperative:

12 (1) fails to appoint an agent for service of process under § 4-
13 20-112;

14 (2) no longer has an agent for service of process; or

15 (3) has an agent for service of process that can not with
16 reasonable diligence be served.

17
18 4-36-1408. Action by Attorney General.

19 The Attorney General may maintain an action to restrain a foreign
20 cooperative from transacting business in this state in violation of this
21 subchapter.

22
23 SUBCHAPTER 15 – DISPOSITION OF ASSETS

24 4-36-1501. Disposition of assets not requiring member approval.

25 Unless the articles of organization otherwise provide, member approval
26 under § 4-36-1502 is not required for a limited cooperative association to:

27 (1) sell, lease, exchange, license, or otherwise dispose of all or any
28 part of the assets of the association in the usual and regular course of
29 business; or

30 (2) mortgage, pledge, dedicate to the repayment of indebtedness, or
31 encumber in any way all or any part of the assets of the association whether
32 or not in the usual and regular course of business.

33
34 4-36-1502. Member approval of other disposition of assets.

35 A sale, lease, exchange, license, or other disposition of assets of a
36 limited cooperative association, other than a disposition described in § 4-

1 36-1501, requires approval of the association's members under §§ 4-36-1503
2 and 4-36-1504 if the disposition leaves the association without significant
3 continuing business activity.

4
5 4-36-1503. Notice and action on disposition of assets.

6 For a limited cooperative association to dispose of assets under § 4-
7 36-1502:

8 (1) a majority of the board of directors, or a greater
9 percentage if required by the organic rules, must approve the proposed
10 disposition; and

11 (2) the board of directors must call a members meeting to
12 consider the proposed disposition, hold the meeting not later than 90 days
13 after approval of the proposed disposition by the board, and mail or
14 otherwise transmit or deliver in a record to each member:

15 (A) the terms of the proposed disposition;

16 (B) a recommendation that the members approve the
17 disposition, or if the board determines that because of conflict of interest
18 or other special circumstances it should not make a favorable recommendation,
19 the basis for that determination;

20 (C) a statement of any condition of the board's submission
21 of the proposed disposition to the members; and

22 (D) notice of the meeting at which the proposed
23 disposition will be considered, which must be given in the same manner as
24 notice of a special meeting of members.

25
26 4-36-1504. Disposition of assets.

27 (a) Subject to subsection (b), a disposition of assets under § 4-36-
28 1502 must be approved by:

29 (1) at least two-thirds of the voting power of members present
30 at a members meeting called under § 4-36-1503(2); and

31 (2) if the limited cooperative association has investor members,
32 at least a majority of the votes cast by patron members, unless the organic
33 rules require a greater percentage vote by patron members.

34 (b) The organic rules may require that the percentage of votes under
35 subsection (a)(1) is:

36 (1) a different percentage that is not less than a majority of

1 members voting at the meeting;

2 (2) measured against the voting power of all members; or

3 (3) a combination of paragraphs (1) and (2).

4 (c) Subject to any contractual obligations, after a disposition of
5 assets is approved and at any time before the consummation of the
6 disposition, a limited cooperative association may approve an amendment to
7 the contract for disposition or the resolution authorizing the disposition or
8 approve abandonment of the disposition:

9 (1) as provided in the contract or the resolution; and

10 (2) except as prohibited by the resolution, with the same
11 affirmative vote of the board of directors and of the members as was required
12 to approve the disposition.

13 (d) The voting requirements for districts, classes, or voting groups
14 under § 4-36-404 apply to approval of a disposition of assets under this
15 subchapter.

16
17 SUBCHAPTER 16 – CONVERSION AND MERGER

18 4-36-1601. Definitions.

19 In this subchapter:

20 (1) “Constituent entity” means an entity that is a party to a
21 merger.

22 (2) “Constituent limited cooperative association” means a
23 limited cooperative association that is a party to a merger.

24 (3) “Converted entity” means the organization into which a
25 converting entity converts pursuant to §§ 4-36-1602 – 4-36-1605.

26 (4) “Converting entity” means an entity that converts into
27 another entity pursuant to §§ 4-36-1602 – 4-36-1605.

28 (5) “Converting limited cooperative association” means a
29 converting entity that is a limited cooperative association.

30 (6) “Organizational documents” means articles of incorporation,
31 bylaws, articles of organization, operating agreements, partnership
32 agreements, or other documents serving a similar function in the creation and
33 governance of an entity.

34 (7) “Personal liability” means personal liability for a debt,
35 liability, or other obligation of an entity imposed, by operation of law or
36 otherwise, on a person that co-owns or has an interest in the entity:

1 (A) by the entity's organic law solely because of the
2 person co-owning or having an interest in the entity; or

3 (B) by the entity's organizational documents under a
4 provision of the entity's organic law authorizing those documents to make one
5 or more specified persons liable for all or specified parts of the entity's
6 debts, liabilities, and other obligations solely because the person co-owns
7 or has an interest in the entity.

8 (8) "Surviving entity" means an entity into which one or more
9 other entities are merged, whether the entity existed before the merger or is
10 created by the merger.

11
12 4-36-1602. Conversion.

13 (a) An entity that is not a limited cooperative association may
14 convert to a limited cooperative association and a limited cooperative
15 association may convert to an entity that is not a limited cooperative
16 association pursuant to this section, §§ 4-36-1603 – 4-36-1605, and a plan of
17 conversion, if:

18 (1) the other entity's organic law authorizes the conversion;

19 (2) the conversion is not prohibited by the law of the
20 jurisdiction that enacted the other entity's organic law; and

21 (3) the other entity complies with its organic law in effecting
22 the conversion.

23 (b) A plan of conversion must be in a record and must include:

24 (1) the name and form of the entity before conversion;

25 (2) the name and form of the entity after conversion;

26 (3) the terms and conditions of the conversion, including the
27 manner and basis for converting interests in the converting entity into any
28 combination of money, interests in the converted entity, and other
29 consideration; and

30 (4) the organizational documents of the proposed converted
31 entity.

32
33 4-36-1603. Action on plan of conversion by converting limited
34 cooperative association.

35 (a) For a limited cooperative association to convert to another
36 entity, a plan of conversion must be approved by a majority of the board of

1 directors, or a greater percentage if required by the organic rules, and the
2 board of directors must call a members meeting to consider the plan of
3 conversion, hold the meeting not later than 90 days after approval of the
4 plan by the board, and mail or otherwise transmit or deliver in a record to
5 each member:

6 (1) the plan, or a summary of the plan and a statement of the
7 manner in which a copy of the plan in a record may be reasonably obtained by
8 a member;

9 (2) a recommendation that the members approve the plan of
10 conversion, or if the board determines that because of a conflict of interest
11 or other circumstances it should not make a favorable recommendation, the
12 basis for that determination;

13 (3) a statement of any condition of the board's submission of
14 the plan of conversion to the members; and

15 (4) notice of the meeting at which the plan of conversion will
16 be considered, which must be given in the same manner as notice of a special
17 meeting of members.

18 (b) Subject to subsections (c) and (d), a plan of conversion must be
19 approved by:

20 (1) at least two-thirds of the voting power of members present
21 at a members meeting called under subsection (a); and

22 (2) if the limited cooperative association has investor members,
23 at least a majority of the votes cast by patron members, unless the organic
24 rules require a greater percentage vote by patron members.

25 (c) The organic rules may require that the percentage of votes under
26 subsection (b)(1) is:

27 (1) a different percentage that is not less than a majority of
28 members voting at the meeting;

29 (2) measured against the voting power of all members; or

30 (3) a combination of paragraphs (1) and (2).

31 (d) The vote required to approve a plan of conversion may not be less
32 than the vote required for the members of the limited cooperative association
33 to amend the articles of organization.

34 (e) Consent in a record to a plan of conversion by a member must be
35 delivered to the limited cooperative association before delivery of articles
36 of conversion for filing if as a result of the conversion the member will

1 have:

2 (1) personal liability for an obligation of the association; or

3 (2) an obligation or liability for an additional contribution.

4 (f) Subject to subsection (e) and any contractual rights, after a
5 conversion is approved and at any time before the effective date of the
6 conversion, a converting limited cooperative association may amend a plan of
7 conversion or abandon the planned conversion:

8 (1) as provided in the plan; and

9 (2) except as prohibited by the plan, by the same affirmative
10 vote of the board of directors and of the members as was required to approve
11 the plan.

12 (g) The voting requirements for districts, classes, or voting groups
13 under § 4-36-404 apply to approval of a conversion under this subchapter.

14
15 4-36-1604. Filings required for conversion – Effective date.

16 (a) After a plan of conversion is approved:

17 (1) a converting limited cooperative association shall deliver
18 to the Secretary of State for filing articles of conversion, which must
19 include:

20 (A) a statement that the limited cooperative association
21 has been converted into another entity;

22 (B) the name and form of the converted entity and the
23 jurisdiction of its governing statute;

24 (C) the date the conversion is effective under the
25 governing statute of the converted entity;

26 (D) a statement that the conversion was approved as
27 required by this chapter;

28 (E) a statement that the conversion was approved as
29 required by the governing statute of the converted entity; and

30 (F) a statement confirming that the converted entity has
31 filed a statement appointing an agent for service of process under § 4-20-112
32 if the converted entity is a foreign organization not authorized to transact
33 business in this state; and

34 (2) if the converting entity is not a converting limited
35 cooperative association, the converting entity shall deliver to the Secretary
36 of State for filing articles of organization, which must include, in addition

1 to the information required by § 4-36-302:

2 (A) a statement that the association was converted from
3 another entity;

4 (B) the name and form of the converting entity and the
5 jurisdiction of its governing statute; and

6 (C) a statement that the conversion was approved in a
7 manner that complied with the converting entity's governing statute.

8 (b) A conversion becomes effective:

9 (1) if the converted entity is a limited cooperative
10 association, when the articles of conversion take effect pursuant to § 4-36-
11 203(c); or

12 (2) if the converted entity is not a limited cooperative
13 association, as provided by the governing statute of the converted entity.

14
15 4-36-1605. Effect of conversion.

16 (a) An entity that has been converted pursuant to this subchapter is
17 for all purposes the same entity that existed before the conversion and is
18 not a new entity but, after conversion, is organized under the organic law of
19 the converted entity and is subject to that law and other law as it applies
20 to the converted entity.

21 (b) When a conversion takes effect under this subchapter:

22 (1) all property owned by the converting entity remains vested
23 in the converted entity;

24 (2) all debts, liabilities, and other obligations of the
25 converting entity continue as obligations of the converted entity;

26 (3) an action or proceeding pending by or against the converting
27 entity may be continued as if the conversion had not occurred;

28 (4) except as prohibited by other law, all the rights,
29 privileges, immunities, powers, and purposes of the converting entity remain
30 vested in the converted entity;

31 (5) except as otherwise provided in the plan of conversion, the
32 terms and conditions of the plan of conversion take effect; and

33 (6) except as otherwise provided in the plan of conversion, the
34 conversion does not dissolve a converting limited cooperative association for
35 purposes of § 4-36-1201 et seq.

36 (c) A converted entity that is an entity organized under the laws of a

1 jurisdiction other than this state consents to the jurisdiction of the courts
2 of this state to enforce any obligation owed by the converting limited
3 cooperative association if, before the conversion, the converting limited
4 cooperative association was subject to suit in this state on the obligation.
5 A converted entity that is an entity organized under the laws of a
6 jurisdiction other than this state and not authorized to transact business in
7 this state may be served with process under § 4-20-113 if the converted
8 entity:

9 (1) fails to appoint an agent for service of process under § 4-
10 20-112;

11 (2) no longer has an agent for service of process; or

12 (3) has an agent for service of process that can not with
13 reasonable diligence be served.

14
15 4-36-1606. Merger.

16 (a) One or more limited cooperative associations may merge with one or
17 more other entities pursuant to this subchapter and a plan of merger if:

18 (1) the governing statute of each of the other entities
19 authorizes the merger;

20 (2) the merger is not prohibited by the law of a jurisdiction
21 that enacted any of those governing statutes; and

22 (3) each of the other entities complies with its governing
23 statute in effecting the merger.

24 (b) A plan of merger must be in a record and must include:

25 (1) the name and form of each constituent entity;

26 (2) the name and form of the surviving entity and, if the
27 surviving entity is to be created by the merger, a statement to that effect;

28 (3) the terms and conditions of the merger, including the manner
29 and basis for converting the interests in each constituent entity into any
30 combination of money, interests in the surviving entity, and other
31 consideration;

32 (4) if the surviving entity is to be created by the merger, the
33 surviving entity's organizational documents;

34 (5) if the surviving entity is not to be created by the merger,
35 any amendments to be made by the merger to the surviving entity's
36 organizational documents; and

1 (6) if a member of a constituent limited cooperative association
2 will have personal liability with respect to a surviving entity, the identity
3 of the member by descriptive class or other reasonable manner.
4

5 4-36-1607. Notice and action on plan of merger by constituent limited
6 cooperative association.

7 (a) For a limited cooperative association to merge with another
8 entity, a plan of merger must be approved by a majority vote of the board of
9 directors or a greater percentage if required by the association's organic
10 rules.

11 (b) The board of directors shall call a members meeting to consider a
12 plan of merger approved by the board, hold the meeting not later than 90 days
13 after approval of the plan by the board, and mail or otherwise transmit or
14 deliver in a record to each member:

15 (1) the plan of merger, or a summary of the plan and a statement
16 of the manner in which a copy of the plan in a record may be reasonably
17 obtained by a member;

18 (2) a recommendation that the members approve the plan of
19 merger, or if the board determines that because of conflict of interest or
20 other special circumstances it should not make a favorable recommendation,
21 the basis for that determination;

22 (3) a statement of any condition of the board's submission of
23 the plan of merger to the members; and

24 (4) notice of the meeting at which the plan of merger will be
25 considered, which must be given in the same manner as notice of a special
26 meeting of members.
27

28 4-36-1608. Approval or abandonment of merger by members.

29 (a) Subject to subsections (b) and (c), a plan of merger must be
30 approved by:

31 (1) at least two-thirds of the voting power of members present
32 at a members meeting called under § 4-36-1607(b); and

33 (2) if the limited cooperative association has investor members,
34 at least a majority of the votes cast by patron members, unless the organic
35 rules require a greater percentage vote by patron members.

36 (b) The organic rules may provide that the percentage of votes under

1 subsection (a)(1) is:

2 (1) a different percentage that is not less than a majority of
3 members voting at the meeting;

4 (2) measured against the voting power of all members; or

5 (3) a combination of paragraphs (1) and (2).

6 (c) The vote required to approve a plan of merger may not be less than
7 the vote required for the members of the limited cooperative association to
8 amend the articles of organization.

9 (d) Consent in a record to a plan of merger by a member must be
10 delivered to the limited cooperative association before delivery of articles
11 of merger for filing pursuant to § 4-36-1609 if as a result of the merger the
12 member will have:

13 (1) personal liability for an obligation of the association; or

14 (2) an obligation or liability for an additional contribution.

15 (e) Subject to subsection (d) and any contractual rights, after a
16 merger is approved, and at any time before the effective date of the merger,
17 a limited cooperative association that is a party to the merger may approve
18 an amendment to the plan of merger or approve abandonment of the planned
19 merger:

20 (1) as provided in the plan; and

21 (2) except as prohibited by the plan, with the same affirmative
22 vote of the board of directors and of the members as was required to approve
23 the plan.

24 (f) The voting requirements for districts, classes, or voting groups
25 under § 4-36-404 apply to approval of a merger under this subchapter.

26
27 4-36-1609. Filings required for merger – Effective date.

28 (a) After each constituent entity has approved a merger, articles of
29 merger must be signed on behalf of each constituent entity by an authorized
30 representative.

31 (b) The articles of merger must include:

32 (1) the name and form of each constituent entity and the
33 jurisdiction of its governing statute;

34 (2) the name and form of the surviving entity, the jurisdiction
35 of its governing statute, and, if the surviving entity is created by the
36 merger, a statement to that effect;

1 (3) the date the merger is effective under the governing statute
2 of the surviving entity;

3 (4) if the surviving entity is to be created by the merger and:

4 (A) will be a limited cooperative association, the limited
5 cooperative association's articles of organization; or

6 (B) will be an entity other than a limited cooperative
7 association, the organizational document that creates the entity;

8 (5) if the surviving entity is not created by the merger, any
9 amendments provided for in the plan of merger to the organizational document
10 that created the entity;

11 (6) a statement as to each constituent entity that the merger
12 was approved as required by the entity's governing statute;

13 (7) a statement confirming that the surviving entity has filed a
14 statement appointing an agent for service of process under § 4-20-112 if the
15 surviving entity is a foreign organization not authorized to transact
16 business in this state; and

17 (8) any additional information required by the governing statute
18 of any constituent entity.

19 (c) Each limited cooperative association that is a party to a merger
20 shall deliver the articles of merger to the Secretary of State for filing.

21 (d) A merger becomes effective under this subchapter:

22 (1) if the surviving entity is a limited cooperative
23 association, upon the later of:

24 (A) compliance with subsection (c); or

25 (B) subject to § 4-36-203(c), as specified in the articles
26 of merger; or

27 (2) if the surviving entity is not a limited cooperative
28 association, as provided by the governing statute of the surviving entity.

29
30 4-36-1610. Effect of merger.

31 (a) When a merger becomes effective:

32 (1) the surviving entity continues or comes into existence;

33 (2) each constituent entity that merges into the surviving
34 entity ceases to exist as a separate entity;

35 (3) all property owned by each constituent entity that ceases to
36 exist vests in the surviving entity;

1 (4) all debts, liabilities, and other obligations of each
2 constituent entity that ceases to exist continue as obligations of the
3 surviving entity;

4 (5) an action or proceeding pending by or against any
5 constituent entity that ceases to exist may be continued as if the merger had
6 not occurred;

7 (6) except as prohibited by law other than this chapter, all
8 rights, privileges, immunities, powers, and purposes of each constituent
9 entity that ceases to exist vest in the surviving entity;

10 (7) except as otherwise provided in the plan of merger, the
11 terms and conditions of the plan take effect;

12 (8) except as otherwise provided in the plan of merger, if a
13 merging limited cooperative association ceases to exist, the merger does not
14 dissolve the association for purposes of § 4-36-1201 et seq.;

15 (9) if the surviving entity is created by the merger and:

16 (A) is a limited cooperative association, the articles of
17 organization become effective; or

18 (B) is an entity other than a limited cooperative
19 association, the organizational document that creates the entity becomes
20 effective; and

21 (10) if the surviving entity is not created by the merger, any
22 amendments made by the articles of merger for the organizational documents of
23 the surviving entity become effective.

24 (b) A surviving entity that is an entity organized under the laws of a
25 jurisdiction other than this state consents to the jurisdiction of the courts
26 of this state to enforce any obligation owed by the constituent entity if,
27 before the merger, the constituent entity was subject to suit in this state
28 on the obligation. A surviving entity that is an entity organized under the
29 laws of a jurisdiction other than this state and not authorized to transact
30 business in this state may be served with process under § 4-20-113 if the
31 surviving entity:

32 (1) fails to appoint an agent for service of process under § 4-
33 20-112;

34 (2) no longer has an agent for service of process; or

35 (3) has an agent for service of process that can not with
36 reasonable diligence be served.

1
2 4-36-1611. Consolidation.

3 (a) Constituent entities that are limited cooperative associations or
4 foreign cooperatives may agree to call a merger a consolidation under this
5 subchapter.

6 (b) All provisions governing mergers or using the term merger in this
7 chapter apply equally to mergers that the constituent entities choose to call
8 consolidations under subsection (a).

9
10 4-36-1612. Subchapter not exclusive.

11 This subchapter does not prohibit a limited cooperative association
12 from being converted or merged under law other than this chapter.

13
14 SUBCHAPTER 17 – MISCELLANEOUS PROVISIONS

15 4-36-1701. Uniformity of application and construction.

16 In applying and construing this uniform act, consideration must be
17 given to the need to promote uniformity of the law with respect to its
18 subject matter among states that enact it.

19
20 4-36-1702. Relation to Electronic Signatures in Global and National
21 Commerce Act.

22 This chapter modifies, limits, or supersedes the federal Electronic
23 Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but
24 does not modify, limit, or supersede § 101(c) of that act, 15 U.S.C. §
25 7001(c) or authorize electronic delivery of any of the notices described in §
26 103(b) of that act, 15 U.S.C. § 7003(b).

27
28 4-36-1703. Savings clause.

29 This chapter does not affect an action or proceeding commenced, or
30 right accrued, before the effective date of this chapter.

31
32 4-36-1704. [Reserved.]

33
34 SECTION 2. Arkansas Code § 4-27-101 is amended to read as follows:

35 4-27-101. Short title.

36 *This chapter shall be known and may be cited as the “Arkansas Business*

1 Corporation Act (1987)."

2
3 SECTION 3. Arkansas Code § 4-20-113(b), concerning service upon an
4 entity rather than the registered agent for the entity, is amended to read as
5 follows:

6 (b) If an entity fails to appoint an agent under this subchapter or if
7 an entity that previously filed a registered agent filing with the Secretary
8 of State no longer has a registered agent, or if its registered agent cannot
9 with reasonable diligence be served, the entity may be served by registered
10 or certified mail, return receipt requested, addressed to one or more of the
11 governors of the entity by name at its principal office in accordance with
12 any applicable judicial rules and procedures. The names of the governors and
13 the address of the principal office shall be as shown in the most recent
14 annual report filed with the Secretary of State. If the entity is not
15 required to file an annual report with the Secretary of State, the names of
16 the governors and the address of the principal office shall be as shown in
17 the entity's public organic document. Service is perfected under this
18 subsection at the earliest of:

- 19 (1) the date the entity receives the mail;
20 (2) the date shown on the return receipt, if signed on behalf of
21 the entity; or
22 (3) five days after its deposit with the United States Postal
23 Service, if correctly addressed and with sufficient postage.

24
25 /s/ Harrelson
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36 Filed Date: 04/06/2009 By: DLP\VJF